

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Asgeir Saebo *et al.*

Serial No.: 09/438,104

Group No.: 1614

Filed: November 10, 1999

Examiner: Jones

Entitled: **Conjugated Linoleic Acid Compositions**

**TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION - 37 CFR § 192)**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(i)(A)

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the date shown below, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief -Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450.

Dated: January 23, 2006

By: 

Mary Ellen Waite

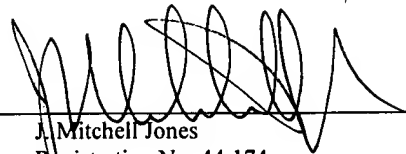
Sir or Madam:

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on August 27, 2005 and received in the Mail Room on August 22, 2005.
2. STATUS OF APPLICANT
This application is on behalf of
other than a small entity.
3. FEE FOR FILING APPEAL BRIEF
Pursuant to 37 CFR § 1.17(g), the fee for filing the Appeal Brief is:
Fee for Filing Appeal Brief \$500.00
4. EXTENSION OF TERM
The proceedings herein are for a patent application and the provisions of 37 CFR § 1.136 apply.
Applicant petitions for a two month extension of time under 37 CFR § 1.136
(fees: 37 CFR §§ 1.17(a)-(d)).
Fee for Extension of Time \$450.00
5. TOTAL FEE DUE
The total fee due is:
Appeal brief fee \$500.00
Extension fee (if any) \$450.00
TOTAL FEE DUE \$950.00
6. FEE PAYMENT
Attached is a check for \$950.00.

7. **FEE DEFICIENCY**

If any additional fee is required, charge Account No. 08-1290.

Dated: January 23, 2006

A handwritten signature in black ink, consisting of a series of loops and a final downward stroke, positioned above a horizontal line.

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PATENT

Attorney Docket No. **CONLINCO-04036**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Asgeir Sæbo *et al.***

Serial No.: **09/438,104**

Group No.: **1614**

Filed: **November 10, 1999**

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APPELLANTS' BRIEF

APPEAL NO.:

Mail Stop Appeal Brief - Patents
Commissioner for Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

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Dated: January 23, 2006

By


Mary Ellen Waite

Sir or Madam:

This Brief is in furtherance of the Notice of Appeal filed July 09, 2004.

The fees required under § 1.17(h) and any required Petition for Extension of Time for filing this Brief and fees therefore are dealt with in the accompanying
TRANSMITTAL OF APPEAL BRIEF.

This Brief is transmitted in triplicate. [37 C.F.R. § 41.37(c)].

This Brief contains these items under the following headings and in the order set forth below [37 C.F.R. § 41.37(c)]:

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I. REAL PARTY IN INTEREST

The real party in interest is Natural ASA, a Norwegian Corporation.

II. RELATED APPEALS AND INTERFERENCES

A Decision On Appeal was mailed July 20, 2005, for Appeal No. 2005-0150 relating to U.S. Patent Application Serial No. 09/271,024, filed March 17, 1999. A copy of this Decision is provided in Section X. A Decision On Appeal was mailed August 30, 2005, for Appeal No. 2005-1578 relating to U.S. Patent Application Serial No. 09/132,593, filed August 11, 1998. A copy of this Decision is provided in Section X. A Notice Of Appeal was filed on September 27, 2005, for U.S. Patent Application Serial No. 09/544,004, filed April 6, 2000. A notice of Appeal was filed on July 6, 2004, for U.S. Patent Application Serial No. 09/949,458, filed Sept. 7, 2001. There are no other related appeals or interferences known to Appellants, Appellants' legal representative, or the Assignee.

III. STATUS OF CLAIMS

Claims 1-6 were filed in the original application. During prosecution of the application, Claims 1-6 were cancelled, and Claims 7-24 added. Claims 7-24 have been rejected by the Office in the Final Office Action dated May 17, 2005. Therefore, Claims 7-24 are pending in this appeal. No other claims are pending. Thus, Appellants appeal the Final Office Action of May 17, 2005.

The Claims, as they now stand, are set forth in the Claims Appendix.

IV. STATUS OF AMENDMENTS

Appellants' Response to the Office Action filed on January 3, 2005, has been entered per the Final Office Action dated May 17, 2005. No amendments to the claims were made in that Response. Thus, there are no pending amendments not entered into the record.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This invention relates to the field of nutrition and the supplementation of feedstuffs and food with conjugated linoleic acid. In particular, compositions and food products comprising conjugated linoleic acids are provided. Conjugated linoleic acid preparations comprising at least fifty percent c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid, the isomerized linoleic acid composition being characterized in including less than one percent 11,13-octadecadienoic and 8,10-octadecadienoic acid isomers expressed as peak area percentage are described in the Specification, for example, at pages 10 - 16, Example 1, and Tables 6 and 10.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is one ground of rejection to be reviewed on appeal:

Whether Claims 7-24 are obvious under 35 U.S.C. §103(a) in view of Cain et al. (WO 97/18320).

If the Appeal of this issue is successful, Applicants will submit a terminal disclaimer to obviate the double patenting rejections upon removal of the obviousness rejection.

VII. ARGUMENT

Issue 1 - Claims 7-24 Are Not Obvious Over Cain et al. (WO 97/18320)

1. The Board Has Held That the Cain Reference has Been Overcome in Two of the Related Appeals

The claims in Appl. No. 09/271,024, which are similar to those pending in the present application, were rejected by the Office as anticipated over the same reference used in the present case, Cain et al. (WO 97/18320) in addition to be obvious over Cain et al. and U.S. Pat. Nos. 5,017,614 and 5,885,594. The Board of Patent Appeals and Interferences reversed the rejection of the claims in Appeal No. 2005-0150, and the claims have subsequently been allowed. In reversing the rejection, the Board found that the evidence presented in the Sæbo Declaration (containing the same data presented in the Sæbo Declaration of record in the instant case) rebutted the prima facie cases of anticipation and obviousness established by the Office.

The claims in Appl. No. 09/132,593, which are highly similar to those pending in the present application,¹ were rejected by the Office as obvious over the same reference used in the present case, Cain et al. (WO 97/18320) in addition to U.S. Pat. Nos. 3,162,658 and 5,554,646. The Board of Patent Appeals and Interferences reversed the rejection of the claims in Appeal No. 2005-1578, and the claims have subsequently been allowed. In reversing the rejection, the Board found that the evidence presented in the Sæbo Declaration (containing the same data presented in the Sæbo Declaration of record in the instant case) rebutted the prima facie cases of anticipation and obviousness established by the Office.

¹ Claim 1 in Appl. No. 09/132,593 is illustrative of the subject matter in that case: "A food product comprising conjugated linoleic acid alkyl esters comprising less than about two percent trans,trans; 8,10 and 11,13 octadecadienoic acid isomers."

2. The Skilled Person Recognizes that the Cain CLA Compositions Necessarily Contain the 8,10 and 11,13 Isomers

In paragraph 5 of the Office Action dated October 4, 2004, the Examiner admits that's "Cain et al. do not specifically discuss peak area percentages of 11,13-octadecadienoic and 8,10-octadecadienoic acid" The Examiner then goes on to state that the claimed compositions would be obvious because the compositions that are disclosed contain only the c9,t11 and t10,c12 isomers because the stated percentages of those isomers adds up to 100 percent.

Applicants respectfully submit that the Examiner is citing Cain for a claim limitation as to which Cain is silent. As established in the Sæbo Declaration (attached in Evidence Appendix, Section IX below), a person of skill in the art knows that other isomers besides the t10,c12 and c9,t11 isomers are necessarily produced when linoleic acid is isomerized by the method used by Cain. (See paragraph 5 of the Sæbo Declaration). Thus, upon reading the Cain reference, the skilled person in the art would realize that the relative percentages of the t10,c12 and c9,t11 isomers were being reported only as to each other and not other CLA isomers such as the 8,10 and 11,13 isomers. In other words, the only logical conclusion that a person of skill in the art could reach is that the data was reported by adding only the amounts of t10,c12 and c9,t11 isomers present in the composition and then dividing the amount of t10,c12 or c9,t11 by that total amount. The amounts of the other isomers that were necessarily present were not included in the calculations. **As discussed in more detail below, the Examiner has not provided evidence or reasoning as to why one skill in the art would either a) not believe the objective evidence contained in the Sæbo Declaration or 2) believe that the process used by Cain would not also produce the 8,10 and 11,13 isomers of CLA.** Indeed, the Examiner's

admission in paragraph 9 of the Office Action that linoleic acid is subject to sigmatropic rearrangement confirms the fact that the 8,10 and 11,13 isomers had to be present in the Cain CLA compositions.

As noted by Mr. Sæbo, the results presented in Cain:

[d]o not mean that the other isomers were not present, as was found in my repeat of Cain. This discrepancy is explainable by the facts that 1) methods for the analysis of CLA compositions in 1996 were rather crude and 2) Cain may have simply chosen not to include non-active isomers when reporting their results. Improved methods for detecting the various isomers of CLA were not developed until well after the 1995 priority date of Cain. This fact is substantiated by Yurawecz *et al.* (attached at Tab 2), who state "the CLA products analyzed in this study were found to contain up to 12 geometric and positional CLA isomers. These findings are based on appropriate and improved analytical methodologies [including gas chromatography techniques] that have only recently been developed." (Yurawecz, *p.* 281). Thus, Cain *et al.* may not have conducted an analysis which could detect the isomers in questions. Consideration of Example 18 of Cain *et al.* supports this analysis. The inventors state that their compositions, produced by the method of Example 6, contained 63.8% CLA, of which 48.9% was the *cis* 9, *trans* 10 isomer and 51.1% was the *trans* 10, *cis* 12 isomer. This means that the inventors provide no analysis of the remaining 36.2% of their composition. The 8,10; 11,13; and *trans-trans* isomers that are discriminated against in the present invention and detected in my repeat of Cain could well have been present in this fraction.

Thus, the Examiner's conclusions regarding Cain *et al.* are rebutted by actual experimental evidence.

Additionally, other evidence not generated by the Applicants is consistent with the Applicants data. No chemical isomerization method has been described in the literature to date which does not produce a variety of isomers. Indeed, it is impossible to isomerize linoleic acid by the methods described in Cain without producing other isomers due to the process known as thermal sigmatropic rearrangement. This process is described in Chapter 5 of the book *Advances in Conjugated Linoleic Acid Research, Volume 2*, J. Sebedio, W.W. Christie, and R. Adolf, Eds.,

AOCS Press, Champaign, IL, 2002 (Sæbo Decl. ¶5). Mr. Sæbo wrote this chapter. Briefly, the research described in this chapter establishes that the formation of the 8,10 and 11,13 isomers is a necessary consequence of heating compositions containing the t10,c12 and c9,t11 isomers. Thus, whenever compositions containing t10,c12 and c9,t11 CLA are heated at temperatures such as those used by Cain et al. (i.e., 180°C for about 2 - 2.5 hours), 8,10 and 11,13 isomers are necessarily produced. Accordingly, it appears that Cain et al. simply failed to conduct an analysis for the other isomers present in the isomerized product since those isomers were necessarily present.

This conclusion is also supported by reference to Sugano et al., *Lipids* 33(5):521-527 (1998)(Reference 53 in Information Disclosure Statement filed November 14, 2000; a copy of the reference is attached hereto in the Evidence Appendix, Section IX). Sugano et al. isomerized linoleic acid conditions similar to those described by Cain et al. The conditions utilized in the two references are compared in following Table.

Cain et al.	Sugano et al.
50 g linoleic acid, 95% pure	50 g linoleic acid, 99% pure
Solvent: 290 grams ethylene glycol	Solvent: 290 grams ethylene glycol
Catalyst: 15 g NaOH	Catalyst: 15 g NaOH
Reaction time: 2 hours	Reaction time: 2 hours
Reaction temperature: 180° C	Reaction temperature: 180° C
Reaction atmosphere: Inert	Reaction atmosphere: Nitrogen

As can be seen, the reaction conditions were almost identical. However, the results are not. As noted on page 522 of Sugano, the resulting CLA preparation contained the following CLA

isomers: 29.8% c9,t11/t9,c11; 29.6% t10,c12; 1.3% c9,c11; 1.4% c10,c12; 18.6% t9,t11/t10,t12; 5.6% linoleic acid; and 13.7% other isomers. In contrast to the simplified analysis presented in Cain et al., isomerization of CLA results in the production of many different isomers, not just the desired c9,t11 and t10,c12 isomers.

As further support for this fact, the Board's attention is respectfully directed to examples 1-4 of the instant application. These examples compare non-aqueous alkali isomerization under high or low temperatures and aqueous alkali isomerization under high or low temperatures. **The important fact to note is that each reaction, even the low temperature non-aqueous alkali isomerization reaction (Example 1, Table 6), produced a distribution of the expected isomers, not just the c9,t11 and t10,c12 isomers.** Thus, ample evidence supports the conclusion that the analysis of Cain et al. is either incorrect or incomplete. Cain et al. appear to have either not analyzed for the isomers or chosen not to present data pertaining to the other isomers in their analysis. This is understandable because at the time, the other isomers were not expected to have a biological effect. However, just because data on these isomers was not presented does not mean that they are not present. Indeed, the evidence establishes that they were necessarily present as a result of the reaction conditions used by Cain et al. **Thus, the compositions of Cain necessarily contained levels 8,10; 11,13; and trans,trans isomers that do not meet the claimed levels.**

Applicants respectfully note that a *prima facie* case of obvious requires that all elements of the claims be present in the cited reference. As established above, the compositions of Cain necessarily contained levels 8,10; 11,13; and trans,trans isomers that do not meet the claimed levels. Thus, Cain et al. does not render the claims obvious. Accordingly, Applicants respectfully request that this ground of rejection be removed and the claims passed to allowance.

3. The Examiner Has Provided No Objective Evidence of Record to Rebut the Applicants Factual Evidence

Instead of rebutting the objective, factual evidence offered by the Applicants or explaining why one of skill in the art would not believe that the Cain methods necessarily produced the 8,10 and 11,13 isomers, the Examiner has relied on case law which is both factually and legally distinguishable from the present application. It is clear that the Examiner has used this misguided approach because he cannot rebut the Applicants objective data and explanations of why the Cain methods necessarily produced the 8,10 and 11,13 isomers of CLA.

In paragraph 5 of the Office Action, the Examiner says that the data offered by Applicants lacks "probative force" and cites *In re Michalek* for the proposition "that it is not a difficult matter to carry out a process in such a fashion that it would not be successful and, therefore, the failure of experimenters who have no interest in succeeding should not be accorded great weight." 74 USPQ 108, at 109.

Applicants respectfully submit that the Office's "well-settled" case law is not settled at all, and, in fact, is not in accordance with proper PTO practice. The decision relied on by the Examiner is more than 50 years old. While this case has not been directly overruled, it is in conflict with current case law and PTO practice. In particular, the Examiner's failure to accord the proper weight to the Sæbo Declarations does not conform with proper patent practice according the Manual of Patent Examining Procedure (MPEP). The Office must respond to all of the arguments and evidence presented by Applicants. The MPEP states that:

Office personnel should consider all rebuttal arguments and evidence presented by applicants. . . . *In re Beattie*, 974 F.2d 1309, 1313, 24 USPQ2d

1040, 1042-43 (Fed. Cir. 1992). . . . **Office personnel should avoid giving evidence no weight**, except in rare circumstances. *Id. See also In re Alton*, 76 F.3d 1168, 1174-75, 37 USPQ2d 1578, 1582-83 (Fed. Cir. 1996).

* * *

A determination under 35 U.S.C. 103 should rest on **all the evidence** and should not be influenced by any earlier conclusion. *See, e.g., Piasecki*, 745 F.2d at 1472-73, 223 USPQ at 788; *In re Eli Lilly & Co.*, 902 F.2d 943, 945, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990). Thus, once the applicant has presented rebuttal evidence, Office personnel should **reconsider** any initial obviousness determination in view of the entire record. *See, e.g., Piasecki*, 745 F.2d at 1472, 223 USPQ at 788; *Eli Lilly*, 902 F.2d at 945, 14 USPQ2d at 1743.²

Additionally, the Courts have held as follows:

When *prima facie* obviousness is established and evidence is submitted in rebuttal, the decision-maker must start over An earlier decision should not . . . be considered as set in concrete, and applicant's rebuttal evidence then be evaluated only its knockdown ability. Analytical fixation on an earlier decision can tend to provide the decision with an undeservedly broadened umbrella effect. *Prima facie* obviousness is a legal conclusion, not a fact. Facts established by rebuttal evidence must be evaluated along with the facts on which the earlier conclusion was reached, not against the conclusion itself. Though the tribunal must begin anew, a final finding of obviousness may of course be reached, but such finding will rest upon evaluation of all facts in evidence, uninfluenced by any earlier conclusion reached . . . upon a different record.³

Furthermore:

If a *prima facie* case is made in the first instance, and if the applicant comes forward with a reasonable rebuttal, **whether buttressed by experiment**, prior art references, or argument, the entire merits of the matter are to be reweighed. (Emphasis added)⁴

Accordingly, even if the Examiner had established a *prima facie* case of obviousness (and Applicants contend that the Examiner did not), the Examiner must respond to the information presented in the Declaration. The above directions of the court and the PTO state that the evidence **must be considered**. These directions do not categorize evidence according to whether

² MPEP §§2144.08; emphasis added.

³ *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

⁴ *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986).

it is developed by interested or disinterested parties and do not state that evidence developed by the inventor **may be ignored. The directions specifically state that experimental evidence, such as that contained in the Declaration, must be considered.** Indeed, the Office must start over and reconsider the entire obviousness analysis.

Any distinction between giving evidence “no weight” or “great weight,” based upon the teaching of *In re Michalek*, does not relieve an Examiner from addressing the cited holdings. Indeed, the Office must address the cited holdings of *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976) and *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986). In particular, per *In re Hedges* and *In re Rinehart*, the Examiner must **respond** to the information presented in the Declarations in a manner indicating that the evidence was considered. The Examiner’s conclusory statements do not indicate that evidence provided in the Declarations was properly considered and evaluated.

Indeed, in the present case, there was no reweighing of the merits by the Examiner. Instead of actually analyzing the Declarations and the factual, experimental data contained within them, the Examiner has summarily dismissed the data with no analysis because it was generated by the Applicants. Applicants submit that the results would be the same no matter who conducts the experiments. **The Examiner has failed to substantively address the data in the Declarations and offer any analysis of why the data is flawed.** As explained in detail below, *In re Michalek* is both legally and factually distinguishable.

a. *In re Michalek* is Legally Distinguishable

In re Michalek involved claims to a thermoplastic resin comprising polymers or copolymers of one or more nuclear-substituted dichlorostyrenes. *In re Michalek*, 34 C.C.P.A. 1124; 162 F.2d 229; 74 U.S.P.Q. 107 (1947). The court stated the following with respect to the

affidavits submitted in support of patentability:

Several affidavits to sustain appellant's contention were filed. In substance it is stated therein that the processes of the Dreisbach patents do not produce monomeric dichlorostyrene sufficiently pure to meet the density and index of refraction recited in the claims or to polymerize, although it is not said that the processes of the patents are incapable of producing the nuclear-substituted dichlorostyrenes mentioned therein. The board considered the affidavits insufficient to overcome the definite naming in those patents of dichlorostyrene and the indication that it is polymerizable. In this connection the solicitor in his brief cites *In re Von Bramer*, 29 C.C.P.A. 1018, 127 F.2d 149, 53 U.S.P.Q. 345.

With respect to the experiments described in the affidavits it must be said that in a patent it is to be presumed that a process, if used by one skilled in the art, will produce the product alleged by the patentee and such presumption is not overcome by a mere showing that it is possible to operate within the disclosure without obtaining the alleged product. Skilled workers would as a matter of course, in our opinion, if they do not immediately obtain desired results, make certain experiments and adaptations and we agree with the argument of the solicitor that it is not a difficult matter to carry out a process in such fashion that it will not be successful and, therefore, the failures of experimenters who have no interest in succeeding should not be accorded great weight, citing *Bullard Company et al. v. Coe*, 79 U.S. App. D.C. 369, 147 F.2d 568, 64 U.S.P.Q. 359. Possibly more extensive experiments than were made by the affiants herein might have produced a different result.

It is clear from this discussion that the holding of the court was specific to the facts presented to it, and especially to the nature of the data contained in the affidavits. The court emphasizes this by stating "more extensive experiments" might have "produced a different result." Thus, *In re Michalek* **does not stand** for the proposition that all reproductions of prior art data by an inventor should be ignored simply because the inventor has no reason to be successful. Instead, the court in *In re Michalek* evaluated the data and found it insufficient. The Examiner has failed to do this in the instant case. As indicated above, the Examiner has provided no reasoning as to why the data submitted is insufficient or incorrect.

b. *In re Michalek* Is Factually Distinguishable

In re Michalek is also factually distinguishable. The Examiner has attempted to ignore the evidence provided by Applicants by relying on *In re Michalek* and characterizing the evidence as a failure. To the contrary, the evidence presented by the Applicants is not a failure to repeat the results of Cain et al. as Cain et al. is **silent** as to the presence of the 8,10 and 11,13 isomers. The only way the Applicants results could be considered to be a failure is if Cain et al. affirmatively stated that the isomers were not present and then Applicants failed not to produce the isomers. This is not the present situation. Applicant's results supplement the teachings of Cain et al. and do not contradict them.

The Examiner is misinterpreting and misapplying *In re Michalek*. First, the Declarations noted in *In re Michalek* was deemed insufficient because it failed to completely address the claimed material. Here, the Declarations provided by the Applicants establish that the methods used by Cain et al. and Cook et al. **could not** produce compositions comprising *less than* 1% trans,trans 8,10 and 11,13 octadecadienoic acid isomers. In particular, the Applicants followed the exact instructions of Cain et al. and analyzed the product. The Applicants did not fail to obtain CLA. Indeed, they obtained CLA with the isomers described by Cook et al. and Cain et al. However, the fact remains that the CLA also contained other isomers that are not mentioned by both Cook et al. and Cain et al. **Cain et al.'s silence concerning the presence of the isomers cannot be equated with the absence of the isomers.**

4. Cain Does Not Enable Production of the Claimed Compositions

In paragraph 6 of the Office Action, the Examiner alleges that "all of the necessary and required parts (wheels) are clearly taught and exemplified in Cain et al." The Examiner further states that Cain teachings that the c9,t11 and t10,c12 isomers are the most beneficial isomers

provides the skilled artisan with “clear motivation to decrease production of undesired CLA isomers, thus producing compositions of the desired c9,t11- and t10,c12-isomers of CLA.” See paragraphs 6 and 7. The Sæbo Declaration establishes that this cannot be true because the methods utilized by Cain are incapable of producing the claimed compositions. In particular, the Cain reference does not teach the refined, carefully controlled methods utilized to produce the claimed compositions that are taught in the present application. Thus, Cain does not teach (or even hint at) a solution to the problem of unwanted isomers in CLA compositions. Since Cain does not teach methods capable of producing the claimed compositions, Cain does not enable production of the claimed compositions. Thus, the claimed compositions cannot be obvious in view of Cain.

5. There is No Ambiguity in Applicant’s Data

In paragraph 8 of the Office Action, the Examiner alleges that there is ambiguity with coelution of the t8,c10 and c9,t11 isomers. This alleged “ambiguity” is completely irrelevant to the data contained in the Sæbo Declaration because the claims specify less than 1% of the 8,10 and 11,13 isomers. Because the Sæbo Declaration demonstrates the presence of 3.49% of the 11,13 isomers, which on its own is much higher than claimed limitation of less than 1% 8,10 and 11,13 isomers, the amount of the 8,10 isomer present is irrelevant. Furthermore, the Examiner’s attempt to create an ambiguity in the data is without scientific basis. The Applicants provided an explanation of how one of skill in the art analyzes CLA by current, scientifically established and validated methods. The Examiner provides no support (for example, by citing to a relevant scientific paper) for his supposition that coelution “could very well give different ratios of the isomers and thus fall within the instantly claimed ranges.” This statement is completely

unsubstantiated and without scientific support.

6. There is No Motivation to Modify

As explained above, the Cain et al. reference does not teach methods which can produce the claimed compositions. Furthermore, the Cain reference does not identify parameters which could be changed to produce the claimed compositions. Thus, there is no motivation to modify the Cain reference to achieve the claimed compositions. Despite the Examiner's arguments, the fact remains that he cannot point to a prior art reference which teaches that the double bonds of CLA are a sigmatropic systems and that the reaction to obtain CLA could be controlled to the extent necessary to produce the claimed compositions. There is no expectation of success, and indeed, an invitation to experiment is not even present in the prior art. The recognition that the isomer compositions of CLA products could be controlled by the reaction conditions utilized by the inventors was not present or suggested anywhere in the prior art. Thus, the Examiner's conclusions regarding sigmatropic rearrangement could only be derived from the applications and the Sæbo Declaration. Indeed, this line of reasoning did not even occur to the Examiner until it was brought to the Examiners attention by the Applicants in the Sæbo Declaration and a 2002 article written by one of the inventors. If the fact CLA double bond systems could be recognized as sigmatropic was apparent prior to the filing date of the present application, then it is unlikely that sigmatropic rearrangement would have been the subject of a scientific publication four years after that filing date.

VIII. CLAIMS APPENDIX

1 - 6. Cancelled.

7. (Previously presented) An isomerized conjugated linoleic acid composition comprising at least fifty percent c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid, said isomerized linoleic acid composition being characterized in including less than one percent 11,13-octadecadienoic and 8,10-octadecadienoic acid isomers expressed as peak area percentage.

8. (Previously presented) The composition of Claim 7, wherein said conjugated linoleic acid composition is an ester.

9. (Previously presented) The composition of Claim 8, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.

10. (Previously presented) An isomerized conjugated linoleic acid composition comprising at least fifty percent c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid, said isomerized linoleic acid composition being characterized in including less than one percent 11,13-octadecadienoic and 8,10-octadecadienoic, and trans-trans-octadecadienoic acid isomers expressed as peak area percentage.

11. (Previously presented) The composition of Claim 10, wherein said conjugated linoleic acid composition is an ester.

12. (Previously presented) The composition of Claim 11, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.

13. (Previously presented) A food product comprising isomerized conjugated linoleic acid, said isomerized linoleic acid composition being characterized in including at least 50% c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid isomers and less than one percent 11,13-octadecadienoic and 8,10-octadecadienoic acid isomers expressed as peak area percentage.

14. (Previously presented) The food product of Claim 13, wherein said conjugated linoleic acid composition is an ester.

15. (Original) The food product of Claim 14, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.
16. (Previously presented) A food supplement comprising isomerized conjugated linoleic acid, said isomerized linoleic acid composition being characterized in including at least 50% c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid isomers and less than one percent 11,13-octadecadienoic and 8,10-octadecadienoic acid isomers expressed as peak area percentage.
17. (Previously presented) The food supplement of Claim 16, wherein said conjugated linoleic acid composition is an ester.
18. (Previously presented) The food supplement of Claim 17, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.
19. (Previously presented) An isomerized conjugated linoleic acid composition comprising at least fifty percent conjugated linoleic acid, said isomerized linoleic acid composition being characterized in including at least 50% c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid isomers and less than one percent 11,13-octadecadienoic or 8,10-octadecadienoic acid isomers expressed as peak area percentage.
20. (Previously presented) The composition of Claim 19, wherein said conjugated linoleic acid composition is an ester.
21. (Original) The composition of Claim 20, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.
22. (Previously presented) A food product comprising isomerized conjugated linoleic acid, said isomerized linoleic acid composition being characterized in including at least 50% c9,t11-octadecadienoic acid and t10,c12-octadecadienoic acid isomers and less than one percent 11,13-octadecadienoic or 8,10-octadecadienoic acid isomers expressed as peak area percentage.
23. (Previously presented) The food product of Claim 22, wherein said conjugated linoleic acid composition is an ester.
24. (Original) The food product of Claim 14, wherein said ester is selected from the group consisting of methyl esters, ethyl esters, triglycerides.

IX. EVIDENCE APPENDIX

Tab A : Declaration of Asgeir Sæbo.

Tab B: Sugano et al., Lipids 33(5):521-527 (1998)

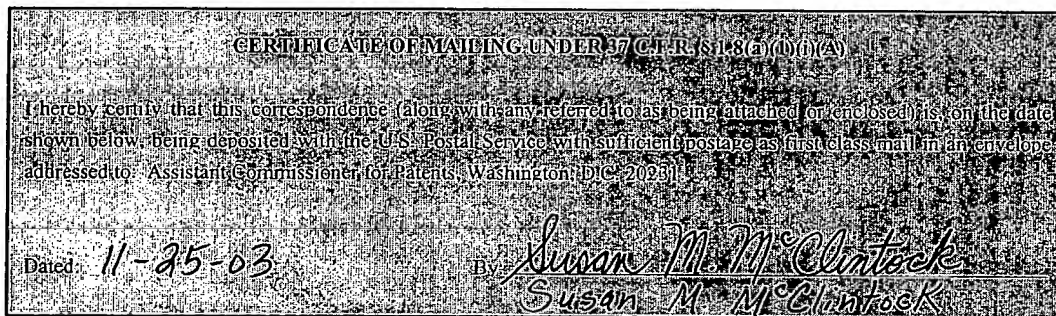
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Asgeir Sæbo et al.**
Serial No.: **09/438,104**
Filed: **November 10, 1999**
Entitled: **Conjugated Linoleic Acid Compositions**

Group No.: **1614**
Examiner: **Jones, D.**

Declaration of Asgeir Sæbo

Assistant Commissioner for Patents
Washington, D.C. 20231



I, Asgeir Sæbo, state as follows:

1. My present position is Vice President of Technology, Natural ASA.
2. I have reviewed the above captioned patent application, of which I am an inventor, the Office Action mailed April 10, 2002, and the Cain and Pariza references cited as prior art.
3. In the repeat of Cain, the conjugation conditions were the same as those described in Example 6 of WO97/18320. The results of the conjugation reactions were analyzed by GC-MS. The results are attached at Tab 1. As can be seen, this conjugation method resulted in a conjugated linoleic acid composition comprising approximately 3.49% c11,t13 CLA and 2.24% t9,t11 and t10,t12 CLA. The t8,c10 isomer co-elutes with the c9,t11 isomers, but almost always occurs in a one to one proportion to the c11,t13 isomer. I note that this method is very similar to the method utilized in the Sugano reference, which was discussed in my previous Declaration. My work confirms that these methods produce CLA with relatively high levels of undesirable isomers.
4. The Examiner states at page 4 of the Office Action that Cain teaches CLA compositions


that are composed of 49.7% c9,t11 and 50.3% t10,c12 CLA, and that because these numbers add up to 100% no other isomers were present. However, the percentages reported do not mean that the other isomers were not present, as was found in my repeat of Cain. This discrepancy is explainable by the facts that 1) methods for the analysis of CLA compositions in 1996 were rather crude and 2) Cain may have simply chosen not to include non-active isomers when reporting their results. Improved methods for detecting the various isomers of CLA were not developed until well after the 1995 priority date of Cain. This fact is substantiated by Yurawecz *et al.* (attached at Tab 2), who state "the CLA products analyzed in this study were found to contain up to 12 geometric and positional CLA isomers. These findings are based on appropriate and improved analytical methodologies [including gas chromatography techniques] that have only recently been developed." (Yurawecz, *p.* 281). Thus, Cain *et al.* may not have conducted an analysis that could detect the isomers in questions. Consideration of Example 18 of Cain *et al.* supports this analysis. The inventors state that their compositions, produced by the method of Example 6, contained 63.8% CLA, of which 48.9% was the cis 9, trans 10 isomer and 51.1% was the trans 10, cis 12 isomer. This means that the inventors provide no analysis of the remaining 36.2% of their composition. The 8,10; 11,13; and trans-trans isomers that are discriminated against in the present invention and detected in my repeat of Cain could well have been present in this fraction.

5. I further note that the formation of the c11,t13 isomer from the t10,c12 isomer and the t8,c10 isomer from the c9,t11 isomer is caused by a process known as thermal sigmatropic rearrangement. This process is described in Chapter 5 of the book *Advances in Conjugated Linoleic Acid Research, Volume 2*, J. Sebedio, W.W. Christie, and R. Adolf, Eds., AOCS Press, Champaign, IL, 2002. I wrote this chapter. Briefly, this research described in this chapter establishes that the formation of the 8,10 and 11,13 isomers is a necessary consequence of heating compositions containing the t10,c12 and c9,t11 isomers. Thus, whenever compositions containing t10,c12 and c9,t11 CLA are heated at temperatures such as those used by Cain *et al.* (i.e., 180°C for about 2 - 2.5 hours), 8,10 and 11,13 isomers are necessarily produced. Because Cain *et al.* does not describe the presence of these isomers in their compositions, the only reasonable conclusion is that they did not analyze for these isomers or chose to delete these isomers from their report because they were not considered to be active isomers.

6. With regard to the rejection over Pariza (U.S. Pat. No. 5,856,149), I note that Pariza *et al.* does not teach compositions that contain both c9,t11 and t10,c12 isomers while containing less than 1% 8,10 and 11,13 isomers.

PATENT
Attorney Docket No. CONLINCO-04036

7. I further declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Asgeir Sæbo

Date:

Oct 31. 2003

Sample Name : 6659: A01348, 024/96-1, CLA FPA

Sample #: 001

Page 1 of 1

FileName : D:\TCWS Data\data\100E 1000-19...100e1001.raw

Date : 19.11.01 11:48:38

Method :

Time of Injection: 19.11.01 09:08:32

Start Time : 35.53 min

End Time : 89.83 min

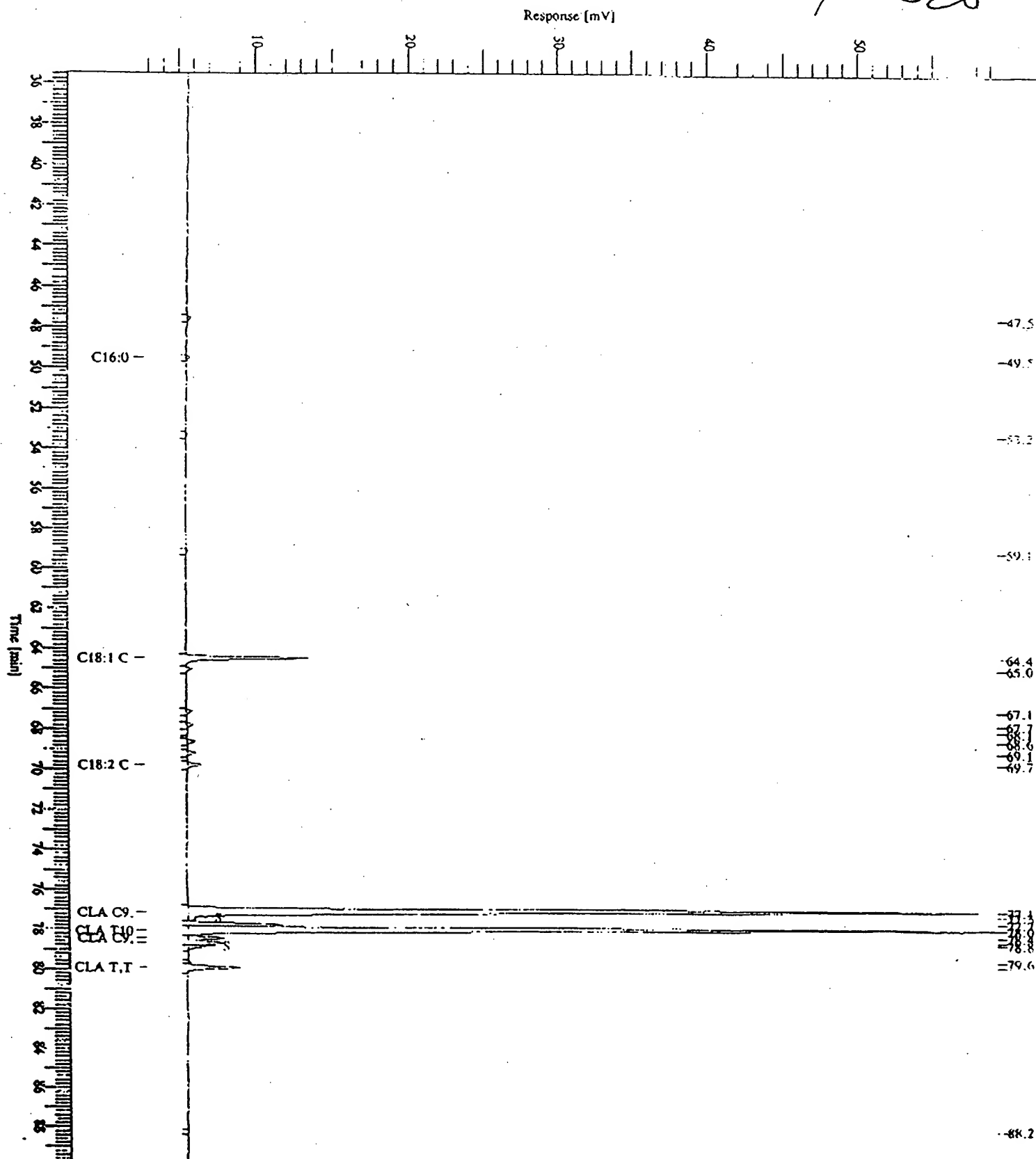
Low Point : 2.75 mV

High Point : 59.51 mV

Plot Offset: 2.75 mV

Plot Scale: 56.8 mV

W097/18320



Software Version : 6.1.2.0.1:D19
 Sample Name : 6659: A01348, 024/96-1, CLA FFA
 Instrument Name : GC
 Rack/Vial : 0/1
 Sample Amount : 1.000000
 Cycle : 1
 Date : 19.11.01 11:48:37
 Data Acquisition Time : 19.11.01 09:08:32
 Channel : B
 Operator : Operator
 Dilution Factor : 1.000000

Result File : D:\TCWS Data\data\Data 100E 1000-1999\100e1001.rst
 Sequence File : D:\TCWS Data\sekvenser\100E.20.10.00..seq

FATTY ACID PROFILE REPORT

PERKIN ELMER AUTOSYSTEM XL GC

Column: WCOT FUSED SILICA 100 m x 0.25 mm COATING CP-SIL 88 DF= 0.2 Chrompack
 cat.no: 7489
 Carrier Gas: He, 30.0 PSI
 Method: 100E.mth
 Temp: 80 C (2 min)-> 45 C/ min-> 130 C (0 min)-> 1 C/ min-> 220 C (10 min)
 Injection: Splitless, 240 C
 Detector: FID, 280 C

Peak #	Time [min]	Component Name	Area [%]	Area [μ V·s]	Height [μ V]
1	47.557		0.14	2040.57	221.66
2	49.507	C16:0	0.12	1770.08	234.26
3	53.277		0.07	1043.10	118.41
4	59.139		0.07	1079.52	131.55
5	64.461	C18:1 c9	4.84	72109.91	8053.81
6	65.035		0.23	3435.33	396.61
7	67.125		0.25	3718.15	401.86
8	67.795		0.28	4195.57	459.60
10	68.621		0.31	4688.64	520.82
11	69.176		0.33	4880.16	532.98
12	69.744	C18:2 c9,c12	0.53	7977.36	868.60
13	77.128	CLA c9,t11+t8,c10	42.84	638739.60	52812.75
14	77.371		0.28	4120.52	216.07
15	77.752	CLA c11,t13	3.49	51987.22	6233.41
16	78.067	CLA t10,c12	40.35	601682.23	54289.00
17	78.437	CLA c9,c11	1.36	20327.77	2373.19
18	78.664	CLA c10,c12	1.61	24007.50	2280.68
19	78.808		0.58	8661.37	1107.38
20	79.693		0.08	1265.48	173.63
21	79.909	CLA t,t 9,11+10,12	2.24	33420.59	3512.11
			100.00	1491150.67	134938.38

Missing Component Report

Component Expected Retention (Calibration File)

C18:0 0.001

19.11.01 11:48:37 Result: D:\T\S Data\data\Data 100E
1000-1999\100e1001.rst

Analyzed by: Natural ASA, Hovdebygda

Approved by: _____

Fett

Zeitschrift für
Wissenschaft
und
Technologie
der Fette, Öle
und Wachse

Lipid

Journal for
Science
and Technology
of Fats,
Oils and Waxes

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Variations in isomer distribution in commercially available conjugated linoleic acid*

Martin P. Yurawecz¹, Najibullah Sehat¹,
Magdi M. Mossoba¹, John A.G. Roach¹,
John K. G. Kramer², and Youh Ku¹

Conjugated linoleic acid (CLA) has been reported to have anticarcinogenic and antiatherogenic properties, to repartition body fat, to build bone mass, to normalize glucose tolerance, and to reduce hyperglycemia and diabetes. CLA products are now commercially available, and there is considerable interest in studying CLA because of this range of reported beneficial effects. However, little is known about the composition of these preparations. Representative commercial CLA products in capsule or liquid (aqueous or oily) form were analyzed for their CLA content and isomer composition using gas chromatography (GC), silver ion-high performance liquid chromatography (Ag⁺-HPLC) and spectroscopic techniques. The content of CLA in the preparations varied widely. Based on the GC-internal standard technique, total CLA varied from 20 to 89% by total weight and 28 to 94% of total fat. One product contained no CLA. The isomer distributions were generally of two types: those with two major CLA positional isomers, and those with four major CLA positional isomers. All the CLA preparations in capsule form contained the four isomer mixture, while the liquid preparations contained from two to four CLA positional isomers.

Unterschiede in der Isomerenverteilung kommerziell erhältlicher konjugierter Linolsäure. Von konjugierter Linolsäure (CLA) wurde berichtet, daß sie anticanzerogene und antiatherogene Eigenschaften hat, Körperfett repartitioniert, Knochenmasse aufbaut, Glukosetoleranz normalisiert und Hyperglykämie und Diabetes reduziert. CLA-Produkte sind jetzt kommerziell erhältlich, und es gibt wegen der oben aufgeführten positiven Effekte ein beträchtliches Interesse daran, CLA zu studieren. Allerdings ist wenig bekannt über die Zusammensetzung dieser Herstellungen. Repräsentative kommerzielle CLA-Produkte in Kapsel- oder flüssiger Form (auf Wasser- oder Ölbasis) wurden mit Hilfe eines Gaschromatographen (GC), Silberionen-Hochdruckflüssigkeitschromatographie (Ag⁺-HPLC) und spektroskopischer Techniken auf ihren CLA-Inhalt und ihre isomere Zusammensetzung analysiert. Der Inhalt der CLA in den Herstellungen variierte stark. Auf der Basis der GC-internen Standardtechnik schwankten die gesamten CLA zwischen 20 und 89% bezogen auf das Gesamtgewicht und zwischen 28 und 94% bezogen auf den Gesamtfettanteil. Ein Produkt enthielt keine CLA. Die Isomerverteilungen untergliederten sich allgemein in zwei Typen: solche mit zwei Positionsisomeren und solche mit vier Positionsisomeren. Alle CLA-Herstellungen in Kapselform beinhalteten das Gemisch der vier Isomere, während die flüssigen Herstellungen zwischen zwei und vier der Positionsisomere enthielten.

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1 Introduction

Conjugated linoleic acid (CLA) has been reported to provide direct [1] or indirect [2] protection against several types of cancer, atherosclerosis [3, 4], and diabetes [5]. CLA has also been reported to improve feed efficiency [6] and increase muscle [7, 8], and bone mass [9]. These results were generally obtained in experimental animals fed commercial CLA preparations containing approximately equal amounts of four *cis/trans* conjugated octadecadienoic (18:2) acids: 8 *trans*, 10 *cis*-18:2; 9 *cis*, 11 *trans*-18:2; 10 *trans*, 12 *cis*-18:2; 11 *cis*, 13 *trans*-18:2; and minor amounts of the corresponding *cis,cis* and *trans,trans* CLA isomers [10]. Thus, the contribution(s) of the specific isomers to the observed effects are not known. In contrast, natural products, such as milk, cheese, and meat from ruminant animals contain mainly rumenic acid (9 *cis*, 11 *trans*-18:2) [11–13] with minor amounts of 7 *trans*, 9 *cis*-18:2 [14] and other isomers

[15–17]. The total CLA content in these natural products ranges from trace to 2% of total fatty acids [12, 18, 19].

The present study was undertaken to determine the content and distribution of CLA isomers in commercially available CLA capsules and liquid products with labels stating to contain CLA. The CLA isomers were analyzed by gas chromatography (GC) and silver ion-high performance liquid chromatography (Ag⁺-HPLC) as their fatty acid methyl esters (FAME), and identified by GC-electron ionization mass spectroscopy (GC-EIMS) and GC-direct deposition-Fourier transform infrared (GC-DD-FTIR) spectroscopy as their 4,4-dimethyloxazoline derivatives [10, 14, 17, 20].

2 Materials and Methods

2.1 Chemicals

Representative CLA preparations were purchased locally, from specialty chemical companies, or from the World Wide Web. Several pure CLA isomers were obtained as their free fatty acids from *Matreya, Inc.* (Pleasant Gap, PA). Acetonitrile and hexane were UV grade. Other solvents were distilled-in-glass quality. 2-Amino-2-methyl-1-propanol (95%) was purchased from *Aldrich Chemical Company, Inc.* (Milwaukee, WI). A 10% solution of trimethylsilyldiazomethane in hexane was obtained from *TCI America* (Portland, OR).

¹ US Food and Drug Administration, Center for Food Safety and Applied Nutrition, USA.

² Southern Crop Protection, Food Research Center, Agriculture and Agri-Food Canada, Canada.

* Presented in part at the 52nd International Deutsche Gesellschaft für Fettwissenschaft (DGF) Congress in Magdeburg, Germany, Sept. 13–15, 1998.

Anhydrous NaOCH₃/methanol was purchased from Supelco, Inc. (Bellefonte, PA.).

2.2 Lipid extraction

A known weight (approximately 25 mg) of each product was dissolved in 2 ml 1 N KOH in ethanol (95%) and hydrolyzed overnight in the dark at room temperature. For quantitative analyses, one mg of eicosanoic acid (23:0) was added as an internal standard. After hydrolysis, 5 ml of H₂O and one ml of 6 N HCl were added and the free fatty acids were extracted three times with 5 ml diethyl ether/petroleum ether (1:1). The combined extracts were washed with H₂O and dried over anhydrous Na₂SO₄, and the solvents removed under a stream of argon. Aqueous CLA samples were first extracted with petroleum ether/diethyl ether (1:1), and 25 mg of the extracted lipids were treated as described above.

2.3 Derivatizations

FAMES were prepared for GC by dissolving the free fatty acids in one ml of benzene/methanol (4:1) to which 0.5 ml of a 10% solution of trimethylsilyldiazomethane in hexane were added [21]. The reaction was allowed to stand for 0.5 h with occasional gentle shaking. Thereafter, five drops of glacial acetic acid were added with gentle shaking. The same amount of glacial acetic acid was added to each of the solutions to destroy excess yellow trimethylsilyldiazomethane. Some solutions did not become clear on addition of glacial acetic acid. Then 5 ml of H₂O were added, and the reaction mixture was extracted with one ml of isooctane. The extract was subsequently dried over anhydrous Na₂SO₄.

The 4,4-dimethyloxazoline (DMOX) derivatives were prepared to determine the double bond position of CLA isomers. Ten to 20 mg of the free fatty acid product prepared above was added to a screw cap reaction tube (1 ml) and a threefold excess (w/w) of 2-amino-2-methyl-1-propanol was added. The tube was purged with argon, capped, and heated at 170 °C for 0.5 h in an oven. DMOX derivatives were then partitioned into petroleum ether as described previously [22].

2.4 Gas chromatography

The analyses of the FAMES were carried out using a Hewlett-Packard (Palo Alto, CA) model 5890 gas chromatograph

fitted with a flame-ionization detector. A CP-Sil 88 fused-silica capillary column (100 m × 0.25 mm i.d. × 0.2 μm film thickness; Chrompack, Bridgewater, NJ) was used, and H₂ was the carrier gas at a split ratio of 50:1. The column was operated at 75 °C for 2 min, then temperature-programmed at 5 °C/min to 185 °C, held for 30 min, followed by a second temperature program at 4 °C/min to 225 °C and held there for 33 min.

2.5 Ag⁺-HPLC

The HPLC (Waters 510 solvent delivery system; Waters Associates, Milford, MA) was equipped with an autosampler and 200-μl injection loops (Waters 717), a UV detector operated at 233 nm (Waters 486 tunable absorbance), and a data system (Waters Millennium™ version 2.15). A ChromSpher 5 Lipids analytical silver impregnated column (4.6 mm i.d. × 250 mm stainless steel; 5 μm particle size; Chrompack, Bridgewater, NJ) was operated at room temperature. The mobile phase was 0.1% acetonitrile in hexane and operated isocratically at a flow rate of 1.0 ml/min. The retention times varied slightly between runs due to the insolubility of acetonitrile in hexane. However, these changes did not affect the relative elution sequence of CLA isomers. Typical injection volumes were 5–15 μl at a concentration of 1 mg total FAME per ml.

2.6 Gas chromatography – electron ionization mass spectrometry

The GC-EIMS analyses were performed by using a Hewlett-Packard (model 5890, series II) GC coupled to a mass spectrometer (Autospec Q mass spectrometer) and a data system (OPUS 4000; Micromass, Manchester, UK). The GC-EIMS system utilized version 2.1 BX software. This system was used with a 50 or 100 m CP-Sil 88 fused-silica capillary column. The GC-EIMS conditions were: splitless injection with helium or hydrogen as the carrier gas and sweep was restored 1 min after injection. The injector and transfer lines temperatures were 220 °C. The column was operated at 75 °C for one min after injection, then temperature-programmed 20 °C/min to 185 °C, held there for 15 min, then temperature-programmed 4 °C/min to 220 °C, and held there for 45 min.

Tab. 1. Conjugated linoleic acid (CLA) methyl ester isomers, as % of total CLA, in 13 commercial CLA preparations as determined by silver ion-high performance liquid chromatography (Ag⁺-HPLC).

Product	<i>trans,trans</i>				<i>cis,trans</i> ^a				<i>cis,cis</i>			
	11,13	10,12	9,11	8,10	11,13	10,12	9,11	8,10	11,13	10,12	9,11	8,10
1 aqueous	0 ^b	0	0	0	0	0	0	0	0	0	0	0
2 oil	0	1.1	1.0	tr ^c	0	47.1	50.8	tr	0	tr	tr	0
3 oil	0	0.5	0.5	0	1.1	50.2	47.6	tr	0	tr	tr	0
4 oil	0	1.1	1.3	0	0	45.8	50.7	tr	0	1.1	0.1	tr
5 oil	0	0.6	0.6	0	0	54.0	43.5	0	0	0.7	0.6	0
6 oil	1.5	5.4	11.9	7.1	2.2	38.3	21.7	tr	0	2.3	6.2	3.5
7 capsule	0.7	2.7	2.8	0.5	19.0	32.1	25.6	15.6	0.7	0.4	tr	tr
8 capsule	0.8	2.7	2.5	0.4	16.8	33.9	27.1	14.2	tr	1.7	tr	tr
9 capsule	1.0	3.1	2.8	0.5	16.9	33.7	26.9	14.0	0.6	0.5	tr	tr
10 capsule	0.7	2.5	2.5	0.6	15.5	31.0	27.7	14.2	0.8	2.2	1.8	0.6
11 capsule	0.4	2.8	2.9	0.5	14.4	29.1	30.0	15.9	0.5	1.5	2.1	tr
12 capsule	1.3	3.3	3.4	1.1	19.8	25.9	21.6	16.5	1.2	2.7	2.4	1.0
13 oil	4.0	5.4	5.4	1.7	19.7	26.8	25.6	10.5	0.2	0.1	0.6	0.1

^a The CLA isomers exist either in the *cis,trans* or *trans,cis* configuration. ^b 0, not detectable. ^c tr, trace (<0.05%).

2.7 GC-direct deposition Fourier transform infrared spectroscopy

GC-DD-FTIR was performed using a *Bio-Rad* (Cambridge, MA) *Tracer™ GC-FTIR 60A* spectrometer system. This system was used with a 50 m CP-Sil-88 fused-silica capillary column as described previously [23, 24].

3 Results and Discussion

Preparations of CLA were capsules or liquids that were water-based or oil-based; some contained non-lipid material. Their chemical compositions were not known. Based on the assumption that the CLA products consisted of esters, free fatty acids or combinations thereof, all products were hydrolyzed under alkali conditions and subsequently methylated by using trimethylsilyldiazomethane as catalyst to ensure preservation of the original distribution of CLA isomers [25].

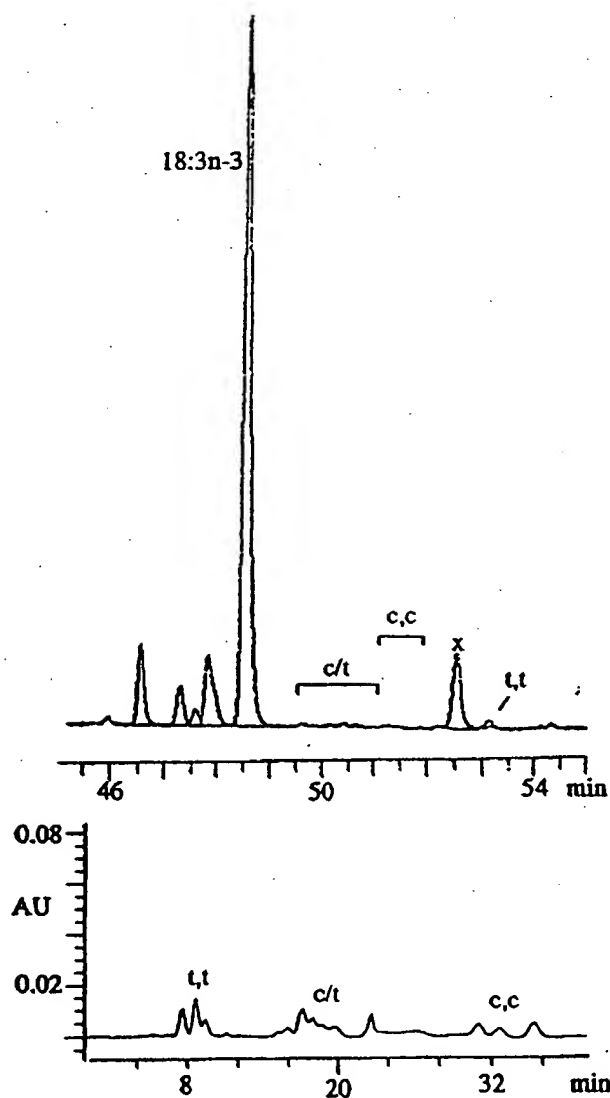


Fig. 1. Gas (upper graph) and silver ion-high performance liquid (lower graph) chromatograms of a commercial conjugated linoleic acid (CLA) preparation containing no CLA. The corresponding CLA regions in each chromatogram are labelled; x is an unknown component. The absorbance scale is shown in the lower graph to indicate the low response found in the CLA region.

Total fatty acid compositions of the 13 CLA products were determined. The internal standard (23:0) added to the CLA products provided a mean to determine the amount of total fatty acids in the original CLA mixture. When this total fatty acid value was compared to the 25 mg of starting material used, an approximate estimate of the non-lipids in the sample was obtained. The approximate amount of non-lipid material calculated for these products ranged from 3 to 28%. In addition, unidentified FAMES ranged from 1 to 29%. The

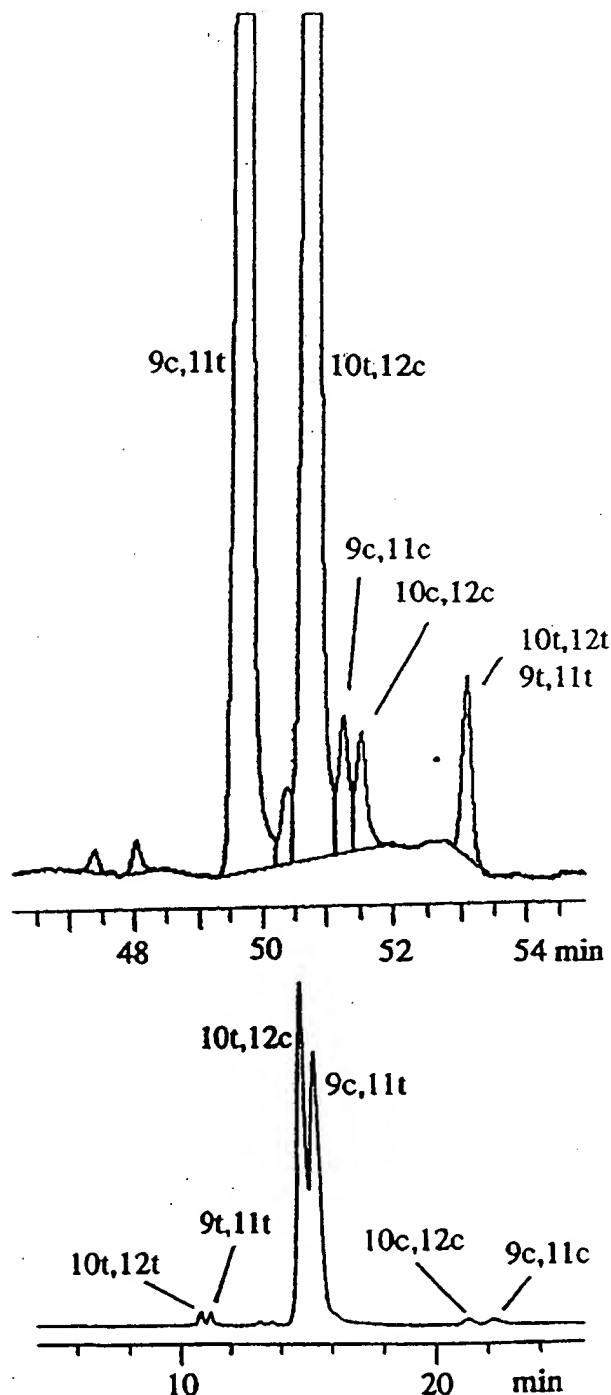


Fig. 2. Gas (upper graph) and silver ion-high performance liquid (lower graph) chromatograms of a representative commercial conjugated linoleic acid (CLA) preparation consisting primarily of two CLA isomers, 9 *cis*, 11 *trans*-18:2 and 10 *trans*, 12 *cis*-18:2. Peaks corresponding to CLA isomers in each chromatogram are labelled.

major fatty acids, other than the CLA isomers found in the preparations, included palmitic (16:0), stearic (18:0), oleic (18:1n-9), and linoleic (18:2n-6) acids. Their combined content ranged from 1 to 84% in the products examined. Based on the GC-internal standard technique, total CLA content ranged from 0 to 94% of the total FAMES, or 0 to 89% of the mass content of the products.

The CLA isomer distributions in the products, analyzed by a combination of GC and Ag⁺-HPLC, are shown in Tab. 1. No CLA was found in product 1. The CLA-containing products fell into two categories: those composed of two major CLA positional isomers (9 *cis*, 11 *trans*-18:2 and 10 *trans*, 12 *cis*-18:2), and those composed of four major CLA positional isomers (8 *trans*, 10 *cis*-18:2; 9 *cis*, 11 *trans*-18:2; 10 *trans*,

12 *cis*-18:2, and 11 *cis*, 13 *trans*-18:2). Other minor CLA isomers were present at much lower concentrations, but are not reported. All the CLA products in capsule form contained the mixture of four isomers, while the liquid products contained either two or four CLA positional isomers. Representative GC and Ag⁺-HPLC chromatograms for these groups are shown in Figs. 1, 2, and 3, respectively.

An explanation for the differences in isomer distributions among the products was not available. Alkali isomerization of 18:2 n-6 in laboratory scale batches prepared according to published procedures [12, 26, 27] resulted in the formation of only two CLA isomers, i.e., 9 *cis*, 11 *trans*-18:2 and 10 *trans*, 12 *cis*-18:2. Alkali isomerization under large-scale, and possibly more severe conditions, may have produced the four CLA positional isomer pattern observed in the commercial CLA preparations described here. This will need to be confirmed.

The GC analyses were based on use of a 100m polar capillary column. In this system, 8 *trans*, 10 *cis*-18:2 was not resolved from 9 *cis*, 11 *trans*-18:2. A shoulder or a split peak may occasionally be evident when the amounts of these two isomers are approximately equal. In contrast, 11 *cis*, 13 *trans*-18:2 eluted before and was resolved from 10 *trans*, 12 *cis*-18:2 using this GC column (Fig. 3, upper graph). The *cis,cis* CLA isomers eluted after 10 *trans*, 12 *cis*-18:2 in the order 8, 10-, 9, 11-, 10, 12-, and 11,13-18:2 as established previously [10, 20]. The last CLA isomers to elute were the *trans,trans*, consisting of a small peak due to 11,13-18:2 followed by an unresolved mixture of 10,12-, 9,11-, and 8,10-18:2 as demonstrated previously [14, 17]. A small unknown peak was observed between the *cis,cis* and the *trans,trans* CLA isomer regions. The structural identity of all CLA isomers was established and confirmed by analyzing the DMOX derivatives of selective CLA products by GC-EIMS and GC-DD-FTIR. Representative mass and infrared spectra were published previously [10, 14, 17, 27].

Chromatograms showing the separation of the CLA isomers by Ag⁺-HPLC are presented below the GC chromatograms in Figs. 1 to 3. The elution orders of all the geometric (in the order *trans,trans*, *cis/trans*, and *cis,cis*) and positional (in the order 11,13-, 10,12-, 9,11-, and 8,10-18:2) CLA isomers by Ag⁺-HPLC were established previously [10]. Ag⁺-HPLC was essential to complement the GC analysis and establish the composition of 8 *trans*, 10 *cis*-18:2 and 9 *cis*, 11 *trans*-18:2, and the distribution of most of the *trans,trans* CLA isomers.

In contrast to the commercial CLA preparations, that were found to contain two or four CLA positional isomers, natural dairy products and meats from ruminant animals contain primarily rumenic acid, 9 *cis*, 11 *trans*-18:2 [11, 12, 14, 17-19]. While it has not been established, which isomer(s) is (are) responsible for the reported beneficial properties of CLA, it is generally thought that anticarcinogenicity is due to rumenic acid [12, 15]. The nutritional and physiological effects, if any, of other CLA isomer(s) in commercially available CLA preparations are not known.

We recently reported, that one of the four major *cis/trans* CLA isomers, 11 *cis*, 13 *trans*-18:2, accumulates preferentially in heart phospholipids and specifically in heart and liver diphosphatidylglycerol (DPG) of pigs fed a CLA mixture containing four positional isomers [20]. DPG is a major component of inner mitochondrial membranes and is involved in many enzymes of bioenergetics in the mitochondria [28, 29]. Watkins et al. [30] demonstrated that docosahexaenoic acid (22:6 n-3) accumulated in DPG of human colonic adenocarcinoma (HT-29) cells and increased mito-

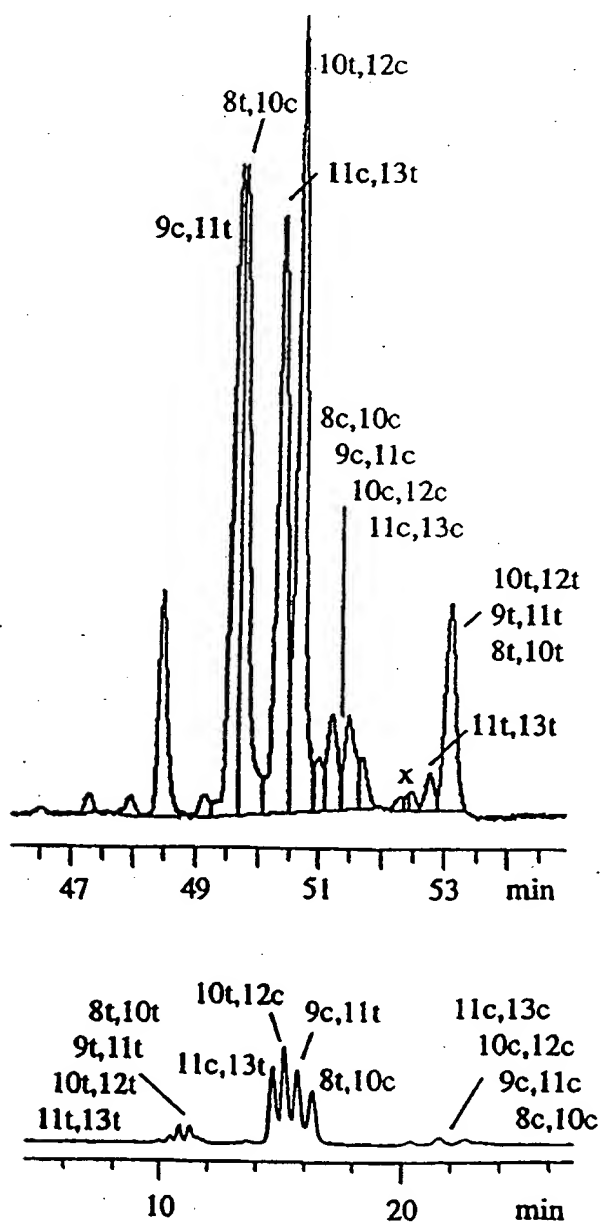


Fig. 3. Gas (upper graph) and silver ion-high performance liquid (lower graph) chromatograms of a representative commercial conjugated linoleic acid (CLA) preparation consisting primarily of four CLA isomers, 8 *trans*, 10 *cis*-18:2, 9 *cis*, 11 *trans*-18:2, 10 *trans*, 12 *cis*-18:2 and 11 *cis*, 13 *trans*-18:2. Peaks corresponding to CLA isomers in each chromatogram are labelled; x is an unknown component.

chondrial oxidant production. Similarly, 11 *cis*, 13 *trans*-18:2 (or any other CLA isomer incorporated into DPG), could affect mitochondrial oxidant production, particularly since it has been shown that the oxidative susceptibility of CLA is comparable to that of arachidonic acid (20:4 n-6) [31, 32]. In response to our findings that 11 *cis*, 13 *trans*-18:2 was selectively incorporated into DPG [20], a major supplier of commercial CLA preparations recently modified the process to eliminate the 11 *cis*, 13 *trans*-18:2 isomer. The simultaneous elimination of 8 *trans*, 10 *cis*-18:2 from the resulting CLA mixture was an additional benefit of preparing a CLA mixture devoid of 11 *cis*, 13 *trans*-18:2.

In conclusion, the CLA products analyzed in this study were found to contain up to 12 geometric and positional CLA isomers. These findings are based on appropriate and improved analytical methodologies that have only recently been developed [10, 14, 16, 17, 20, 27]. All commercially available CLA products investigated differ, some significantly, and the isomers present may not necessarily represent active CLA components. As new products consisting of two or perhaps only one CLA isomer become available, it will be possible to determine the physiological effects of specific isomers. This is essential for an understanding of this unusual group of lipids.

Abbreviations

Ag⁺-HPLC, high-performance liquid chromatography; *cis/trans*, refers to all the CLA isomers having either a *cis,trans* or a *trans,cis* configuration; CLA, conjugated linoleic acid; DMOX, 4,4-dimethyloxazoline; FAME, fatty acid methyl esters; GC-DD-FTIR, gas chromatography-direct deposition-Fourier transform infrared; GC-EIMS, gas chromatography-electron ionization mass spectrometry.

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Advances in Conjugated Linoleic Acid Research, Volume 2

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Chapter 5

Commercial Synthesis of Conjugated Linoleate

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Introduction

Conjugated linoleic acid (CLA) has been available as a health food supplement in soft gelatine capsules since 1995 in the United States, and more recently in several European countries and Japan. CLA products designed for food and animal feed additives are expected to appear on the market in the near future. CLA has been produced for decades for technical purposes and continues to be used as a substitute for Chinese tung oil in the paint and varnish industry due to its "drying" characteristics. The production methods developed for technical CLA products were rapidly modified and improved upon after the discovery of the biological activity of the substance. This chapter will focus on supplements in particular, including current production methods, stability, and breakdown products. Purified isomers are currently available only for research purposes, but a few references to methods available for purification will be given.

CLA for Technical Applications

Dehydration of Ricinoleic Acid

Several decades ago, only two natural oils (tung oil and oiticica) were known to contain conjugated double bonds. Oils that contain these bonds rapidly form a polymer film ("drying") if a thin layer is exposed to air; tung oil was widely used in the paint and varnish industry. An increasing demand for such oils and limited availability encouraged efforts to produce drying oils from nonconjugated oils.

The main constituent of castor bean oil is ricinoleic acid (12-hydroxy-9-octadecenoic acid). Around 1937, dehydrated castor oil appeared on the market in the United States as a substitute for tung oil. Ten years later the product was established as one of the most popular drying oils (1). It has been known since 1888 that castor oil could be dehydrated, and since 1914 it was known that the main isomers of linoleic acid formed had double bonds at positions 9,11 and 9,12, but the detailed composition of dehydrated ricinoleic acid was not investigated until recently. A German patent from 1930 (2) and a U.S. patent from 1934 (3) describe the preparation of dehydrated castor bean oils. A modified procedure was recently used to produce an 83% pure 9-*cis*,11-*trans* CLA concentrate from purified ricinoleic acid (4). Main impurities were the 9-*cis*,11-*cis* and 9-*cis*,12-*trans*-octadecadienoic acids. Conventional dehydration

using high temperatures will create other isomers, mainly 8-*trans*,10-*cis* and *trans*,*trans* isomers. CLA from dehydrated castor oil is not available on the market in supplement form. Apart from safety issues, the reason is the absence of 10-*trans*,12-*cis* CLA, the isomer shown to inhibit fat synthesis (5).

Alkali Isomerization of Linoleic Acid Oils

Attempts to produce drying oil from nonconjugated oils were successful in the late 1930s as well as for oils containing methylene-interrupted fatty acids. In 1941, a U.S. patent was issued that describes the use of monohydric and polyhydric alcohols as solvents and a variety of alkaline catalysts (6). A few years later, two patents were issued that described the use of water (7) and steam (8), respectively, as solvent in an autoclave to achieve the temperatures necessary to conjugate unsaturated acids. It is actually the soap that is conjugated. Upon addition of mineral acid, the conjugated free fatty acids are liberated. Currently, CLA is produced for technical purposes in high alkaline water at ~230°C. Feedstock is usually free fatty acids (after fat splitting to recover glycerol). The product is usually distilled to yield a virtually colorless oil.

Production of CLA for Animal and Human Consumption

Alkaline Water Isomerization

The first products to appear on the health food market contained ~65% CLA, and the profile of the CLA isomers was similar to technical-grade products. Christie *et al.* (9), showed that the main isomers of CLA in addition to 9-*cis*,11-*trans* and 10-*trans*,12-*cis* were an 8,10 and an 11,13 isomer *cis,trans* or *trans,cis*. These were later identified as 8-*trans*,10-*cis* and 11-*cis*,13-*trans* (10). Such products are still available as supplements, and most if not all are produced from linoleate-rich starting materials in high-alkaline water reactions at temperatures >230°C. We investigated reaction parameters in water alkaline (KOH or NaOH catalyst) reactions trying to avoid formation of 11-*cis*,13-*trans* and 8-*trans*,10-*cis*. It turned out not to be possible to achieve a nearly quantitative isomerization and at the same time avoid formation of the said isomers (data not published).

Isomerization in Propylene Glycol

Quantitative isomerization of oils containing polyunsaturated fatty acids in monohydric and polyhydric alcohols was described in 1941 (6). A detailed procedure using ethylene glycol is described in a patent from 1996 (11). Ethylene glycol has not been used commercially for production of CLA for consumer safety reasons. Propylene glycol has therefore been selected by several producers who independently developed proprietary procedures (12,13). KOH was selected as catalyst because of its high solubility compared with NaOH. Reaction temperatures are typically 130–180°C, and times of reaction are from 3 to >24 h. The quantity of KOH

is substantial and in excess reaction is complete, the (hydrochloric or sulfuric) as the mixture becomes a to extract CLA and facilitate emulsion problems. However, For the sake of recovery of stock oil. A triacylglycerolene glycol. After water vacuum, the CLA product Peroxides and volatiles are broken down to secondary

The purification process remove nonvolatile compounds. Heavy metals compounds are used in stainless upon molecular distillation an acid value of ~200 (i value of ~190, the yellowance. However, we have time and also a darkening strong alkaline process, fit of feedstock (free fatty acid CLA in supplements are concentrates that are offered

Isomerization of Mono-

Recently, a proprietary process methyl esters and ethyl esters virtually no solvents (data only a small fraction of the addition of a neutralizing agent methyl or ethyl ester after temperatures down to below 100°C of CLA isomers produced

Thermal [1,5] Sigmatropic

Production of CLA in propylene gives rise to <0.5% each purification of single isomer atmosphere, 10-*trans*,12-*cis* 11-*cis*,13-*trans* concentra

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Consumption

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is substantial and in excess of that needed for quantitative saponification. After the reaction is complete, the mixture is cooled down and water and mineral acid (hydrochloric or sulfuric) are added. Free fatty acids of CLA are liberated as soon as the mixture becomes acidic. One patent describes the use of hexane at this point to extract CLA and facilitate separation from the bottom aqueous layer without emulsion problems. However, the operation is possible without the use of hexane. For the sake of recovery of propylene glycol, free fatty acids are preferred as feedstock oil. A triacylglycerol feedstock will create glycerol to contaminate the propylene glycol. After water and solvent (hexane if used) have been removed under vacuum, the CLA product is preferably purified by deodorization and distillation. Peroxides and volatiles are easily removed by deodorization. The peroxides are broken down to secondary volatile products that are removed in the process.

The purification process should also include a molecular distillation step to remove nonvolatile compounds such as polymers, sterols, and propylene glycol esters. Heavy metals could also arise from the isomerization process if mineral acids are used in stainless steel reactors (14). Their concentrations are reduced upon molecular distillation as well. A distilled product is almost colorless and has an acid value of ~200 (mg KOH/g). A nondistilled product might have an acid value of ~190, be yellow to slightly brown in color and have an opaque appearance. However, we have observed a slight decrease in acid value in capsules over time and also a darkening of the oil if the capsule material is colored. Due to the strong alkaline process, free fatty acids are the final product regardless of the form of feedstock (free fatty acid, a monoalkyl ester, or a triacylglycerol oil). Therefore, CLA in supplements are offered almost exclusively as free acids, in contrast to n-3 concentrates that are offered either as ethyl esters or reesterified triacylglycerols.

Isomerization of Mono-Alkyl Esters Using Alkali Metal Alcoholates

Recently, a proprietary method has been developed that quantitatively isomerizes methyl esters and ethyl esters of linoleic acid using very low quantities of catalysts and virtually no solvents (data not published). Because of the quantity of catalyst (~2%), only a small fraction of the ester is saponified and hence appears as free fatty acid after addition of a neutralizing agent. Most of the product (>92%) is still in the form of the methyl or ethyl ester after the isomerization process. The reaction proceeds at temperatures down to below 100°C, and the CLA product is characterized by very low levels of CLA isomers produced by thermal [1,5] sigmatropic rearrangements (see below).

Thermal [1,5] Sigmatropic Rearrangements of CLA Isomers

Production of CLA in propylene glycol or other alcohol under mild conditions gives rise to <0.5% each of the isomers 11-*cis*,13-*trans* and 8-*trans*,10-*cis*. After purification of single isomers, we showed that upon heating to 220°C in an inert atmosphere, 10-*trans*,12-*cis* gives rise to 11-*cis*,13-*trans* (Fig. 5.1). Upon heating an 11-*cis*,13-*trans* concentrate, 10-*trans*,12-*cis* was produced. Under optimal condi-

tions, an equilibrium is established between these isomers, and only minor quantities of *cis,cis* and *trans,trans* isomers are formed. The isomer shift is actually a thermal [1,5] sigmatropic rearrangement, (Fig. 5.2) allowed according to the orbital symmetry theory (Woodward-Hoffmann). For this sigmatropic rearrangement to occur, it is essential that one of the bonds be in the *cis*-configuration. A similar rearrangement is observed for the isomers 9-*cis*,11-*trans* and 8-*trans*,10-*cis*. The phenomenon is actually a tool for chemists to produce new isomers. Any given CLA isomer that contains one double bond in the *cis*-configuration and one in the *trans*-configuration can be heated to be isomerized into another specific *cis,trans* or *trans,cis* isomer. Isomers formed might be predicted from formulae as in Fig. 5.2. A simple rule of thumb is that the two double bonds will move against the *cis* end of the bond pairs. For example, 7-*trans*,9-*cis* (a common isomer in milk fat) will isomerize to 8-*cis*,10-*trans* and *vice versa*. Prolonged heating of isomers

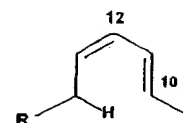


Fig. 5.2. Drawing explain isomers 10-*trans*,12-*cis* at state depicted in the mixture $-(CH_2)_8CO_2H$.

seems to gradually dev (iron, copper and other n

Isomer Profile in Avail.

The total content of CLA Sunflower oil as a starting up to 80%. Both oils can below room temperature. ed acids and >80% CLA. product" and the "2-ison exclusively 9-*cis*,11-*trans* 50% of the CLA. The for gas chromatography (GC co-elute with 9-*cis*,11-*tr* major *trans,trans* peak (9. products may contain as li 8-*trans*,10-*cis* can be est. Both are produced to the. the ratio of 11-*cis*,13-*tr* *trans*,10-*cis* to the co-eluti Products from a single soi mer profile (15), and pro data, Table 5.1) or totally. January-March 2002 by o *trans* and 8-*trans*,10-*cis* (7

Stability and Break

Stability of CLA Compa

A few studies report dat different test models. Bu

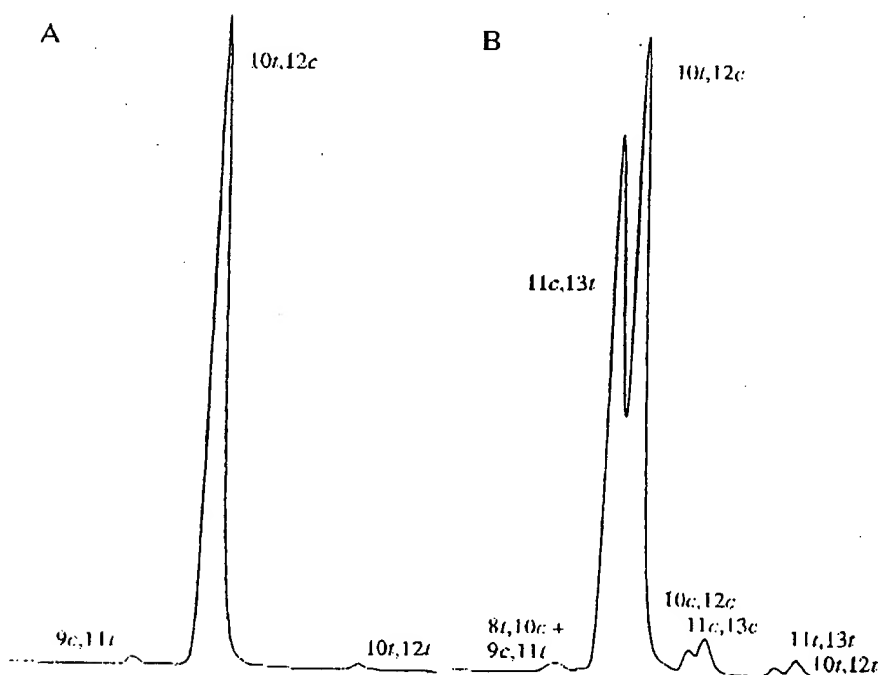
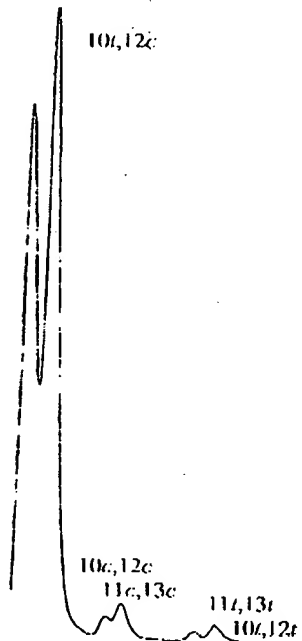


Fig. 5.1. Gas chromatography (GC) profile of ethyl ester of purified 10-*trans*,12-*cis* CLA isomer (a) before and (b) after heating to 220°C in an inert atmosphere for 2 h. The process caused isomerization into the isomer 11-*cis*,13-*trans* by thermal [1,5] sigmatropic hydrogen shift. GC conditions: 100-m CP Sil 88 fused silica capillary column and flame ionization detection (FID).

ers, and only minor quanti-
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Commercial Synthesis of CLA

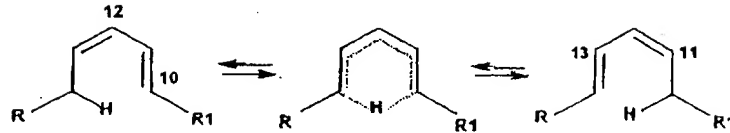


Fig. 5.2. Drawing explaining thermal [1,5] sigmatropic rearrangement between the CLA isomers 10-*trans*,12-*cis* and 11-*cis*,13-*trans*. Reaction is spontaneous and the transition state depicted in the middle is not an intermediate product. R = $-(CH_2)_4$ and R₁ = $-(CH_2)_8CO_2H$.

seems to gradually develop *cis,cis* and *trans,trans* isomers. Impurities present (iron, copper and other metals) will greatly favor formation of *trans,trans* isomers.

Isomer Profile in Available Supplements

The total content of CLA in supplements more or less reflects the starting material. Sunflower oil as a starting material results in ~65% CLA, whereas safflower oil yields up to 80%. Both oils contain a level of palmitic acid that tends to cause precipitation below room temperature. Products are now available with a reduced content of saturated acids and >80% CLA. The products can be classified in two groups, the "4-isomer product" and the "2-isomer product" (Fig. 5.3). The latter product contains almost exclusively 9-*cis*,11-*trans* and 10-*trans*,12-*cis*, both up to ~38% of the oil, or almost 50% of the CLA. The former, however, contains several isomers. The elution order on gas chromatography (GC) of the 4 main peaks is 9-*cis*,11-*trans*; 8-*trans*,10-*cis* (may co-elute with 9-*cis*,11-*trans*); 11-*cis*,13-*trans*; and 10-*trans*,12-*cis* (9). In addition a major *trans,trans* peak (9,11 and 10,12 co-eluting) often reaches the same level. Such products may contain as little as 8% 10-*trans*,12-*cis*. Despite co-elution, the content of 8-*trans*,10-*cis* can be estimated approximately by measurement of 11-*cis*,13-*trans*. Both are produced to the same degree from their mother components. In other words, the ratio of 11-*cis*,13-*trans* to 11-*cis*,13-*trans* + 10-*trans*,12-*cis* equals that of 8-*trans*,10-*cis* to the co-eluting peak 8-*trans*,10-*cis* + 9-*cis*,11-*trans* (data not published). Products from a single source have been reported to show substantial variation in isomer profile (15), and products also are available that contains virtually no (present data, Table 5.1) or totally lack CLA (10). Two of 17 products sampled and analyzed in January-March 2002 by our laboratory contained high levels of the isomers 11-*cis*,13-*trans* and 8-*trans*,10-*cis* (Table 5.1).

Stability and Breakdown Products of CLA Preparations

Stability of CLA Compared with Linoleic Acid

A few studies report data on the stability of CLA compared with linoleic acid in different test models. Bubbling of oxygen through samples at 90°C resulted in a

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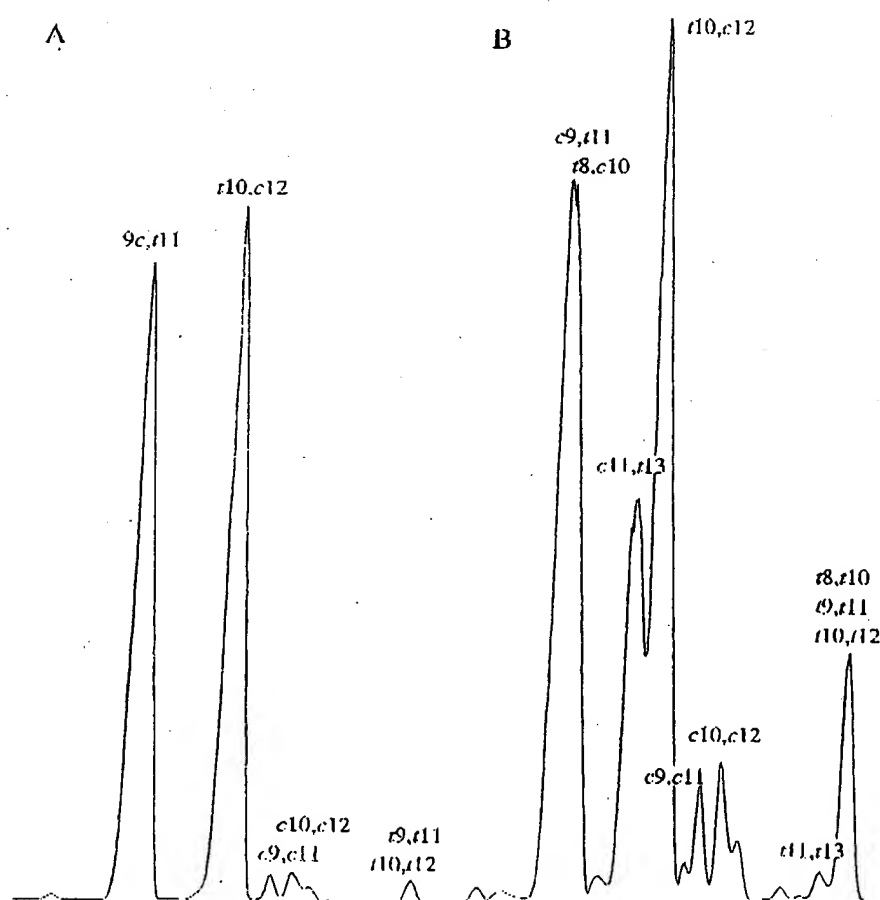


Fig. 5.3. Partial gas chromatography (GC) profile of ethyl esters of (a) a "2 isomer type" and (b) a "4 isomer type" CLA supplement, using a 100-m CP Sil 88 fused silica capillary column and flame ionization detection (FID). Product (a) is identical to product No. 14 and product (b) is identical to No. 17 in Table 5.1. Note co-elution of 8-*trans*,10-*cis* and 9-*cis*,11-*trans*.

much higher peroxide value (PV) in linoleic acid (16) than for CLA. When a mixture of CLA isomers was heated to 50°C in air, the rate of oxidation was considerably faster for CLA than for linoleic acid. The rate of oxidation was measured as "remaining CLA" by GC. When comparing groups of CLA isomers, stability decreased in order of *trans,trans* > *cis,trans* or *trans,cis* > *cis,cis*. (17). In a study in aqueous and solvent systems measuring stability by the induction period system,

TABLE 5.1

Content of CLA (% of tot. January-March 2002^a)

Product	Product type
1	Soft gelatine cap
2	Liquid
3	Soft gelatine cap
4	Soft gelatine cap
5	Soft gelatine cap
6	Soft gelatine cap
7	Soft gelatine cap
8	Soft gelatine cap
9	Soft gelatine cap
10	Soft gelatine cap
11	Soft gelatine cap
12	Soft gelatine cap
13	Soft gelatine cap
14	Soft gelatine cap
15	Liquid, emulsion
16	Soft gelatine cap
17	Soft gelatine cap

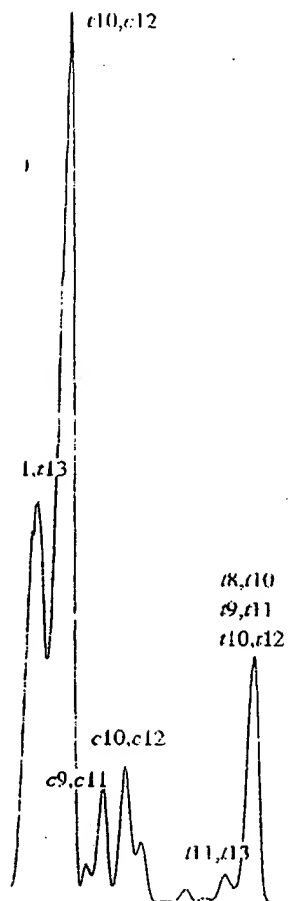
^aThe isomers 10-*trans*,12-*cis* and 9-*cis*,11-*trans* were of the "4 isomer" type. 9-*cis*,11-*trans* (not tabulated due to low content) is in all supplements containing CLA. (A 100.00% free fatty acid region of product 14 and product 17).

CLA was more stable than linoleic acid (18). Another study showed the following order: oleic > CLA > linoleic. CLA was heated at 40°C and monitored by 13-*cis*,11-*trans*, the major monohydroperoxide, and 13- and 14-monohydroperoxide.

Data reported on the stability of CLA do not easily seem comparable to that of linoleic acid. The breakdown of peroxides in

Volatiles

In a pilot project on development of a CLA supplement in hexane was observed in searching for the source



yl esters of (a) a "2 isomer
100-m CP Sil 88 fused silica
duct (a) is identical to prod-
5.1. Note co-elution of 8-

an for CLA. When a mix-
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oxidation was measured as
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s > cis,cis. (17). In a study
ne induction period system,

TABLE 5.1

Content of CLA (% of Total) in 17 Commercial Supplements Sampled in January–March 2002^a

Product	Product type	Country	%CLA	%10 <i>t</i> ,12 <i>c</i>	%11 <i>c</i> ,13 <i>t</i>	Acid value
1	Soft gelatine capsule	Norway	80.1	47.8	0.4	197
2	Liquid	Norway	78.6	47.1	1.8	2
3	Soft gelatine capsule	Norway	69.1	46.7	1.2	196
4	Soft gelatine capsule	Norway	78.3	48.7	0.3	197
5	Soft gelatine capsule	Norway	76.4	46.6	1.3	193
6	Soft gelatine capsule	U.S.	71.4	46.3	0.5	189
7	Soft gelatine capsule	U.S.	74.8	43.1	0.9	192
8	Soft gelatine capsule	U.S.	77.9	48.5	0.3	199
9	Soft gelatine capsule	U.S.	70.8	44.4	0.6	189
10	Soft gelatine capsule	U.S.	79.6	45.3	0.4	193
11	Soft gelatine capsule	U.S.	72.0	44.4	2.3	192
12	Soft gelatine capsule	U.S.	74.3	43.6	1.0	187
13	Soft gelatine capsule	U.S.	61.5	28.5	0.8	180
14	Soft gelatine capsule	U.S.	76.3	48.4	0.3	196
15	Liquid, emulsion	U.S.	1.2	47.8	0.3	NA
16	Soft gelatine capsule	S. Africa	51.7	16.5	16.1	198
17	Soft gelatine capsule	Norway	57.7	29.9	16.5	200

^aThe isomers 10-*trans*,12-*cis* and 11-*cis*,13-*trans* are expressed as the percentage of total CLA. Only two products were of the "4 isomer" type. Two products were liquids, one oil and one emulsion (1.7% fat). Content of 9-*cis*,11-*trans* (not tabulated due to overlap with 8-*trans*,10-*cis*) is approximately equal or slightly less than 10-*trans*,12-*cis* in all supplements currently available. Distilled products typically have acid values of 195–200 mg KOH/g. (A 100.00% free fatty acid product of oleic acid has a theoretical acid value of 198.60). CLA region of product 14 and product 17 is illustrated in Figure 5.3. NA, not available.

CLA was more stable than linoleic acid as free fatty acids, and less stable as ethyl esters (18). Another study using methyl esters reported that stability decreased in the following order: oleate > CLA > linoleate. Samples were stored in the dark at 40°C and monitored by thin-layer chromatography (TLC), GC and PV. From 9-*cis*,11-*trans*, the major monohydroperoxides formed were identified as 8-, 9-, 12- and 13-monohydroperoxides, whereas 10-*trans*,12-*cis* yielded primarily 9-, 10-, 13-, and 14-monohydroperoxides (19).

Data reported on the PV of CLA preparations are consistent with our observations. CLA do not easily develop high PV, yet the oxidative breakdown of CLA seems comparable to that of linoleic acid. The reason is likely to be a more rapid breakdown of peroxides into secondary oxidation products.

Volatiles

In a pilot project on developing a procedure for CLA production, a high content of hexane was observed in a product by headspace GC-mass spectrometry. After searching for the source of contamination, it was finally concluded that pentane

and hexane are among the secondary oxidation products of CLA. This was later confirmed by experiments. To our knowledge, hexane has never been reported to be an important inherent oxidation product of vegetable oils. In a free fatty acid concentrate of 9-*cis*,11-*trans* stored in the dark with air access for 1 wk, the two major volatiles that developed were, not surprisingly, heptanal and 2-nonenal. The concentration increased from 4.8 and 0.7 to 84.6 and 22.5 µg/g, respectively. Volatile breakdown products seem not to build up in soft gelatine capsule supplements. A CLA product that was stored for 5 y at room temperature contained 2.3 µg/g hexanal and 2.2 µg/g heptanal (data not published). No antioxidant was added to the supplement.

Among less volatile breakdown products, furan fatty acids were reported when air was bubbled through CLA dissolved in a mixture of methanol and water at 50°C. (20). Furanoid fatty acids might also arise in preparation of fatty acid methyl esters (FAME) for GC. To our knowledge, furan fatty acids have not been reported as an oxidative breakdown product in dry oil preparations of CLA.

Polymers

Conjugated oils are considered valuable raw materials for the paint and varnish industry because of their film forming properties ("drying") upon air access. This property gives rise to concern regarding the stability of CLA preparations. In a stability test program, 10 mL of CLA triacylglycerols and free fatty acids were stored in an amber open glass bottle in darkness. After 4 mo at 25°C, controls without antioxidants added were highly viscous and not suitable for further stability testing. The samples had a membrane layer on the surface, and the viscosity clearly developed over time. Samples with antioxidants did show a retarded viscosity development (data not published).

Soft gelatine capsules are considered to give reasonable protection from exposure of unsaturated oils to air. Capsules containing CLA free fatty acids showed a slight increase in polymer content from 1% in freshly prepared capsules to 7% after 5 y (data not published). For comparison of health risks, a limit for rejection on cooking oils has been established in some countries; values listed in a report from the European Parliament are 16% (Holland), and 10% (Belgium and Czech Republic) (21).

Stability of CLA in Soft Gelatine Capsules

No data have yet been published on the stability of CLA in capsules. Observations on polymers and volatiles in capsules are reported above. In a stability test program according to International Conference on Harmonization (ICH) guidelines on a free fatty acid product, the content of total CLA was not significantly reduced after 24 mo at 25°C/60% relative humidity. In this test, CLA was measured by GC. Peroxide value (PV) did not develop in the capsules (data not published).

Next Generation Pr

Isomer Purification

All CLA supplements contain 9-*cis*,11-*trans* and 10-*trans* product might be justified. 9-*cis*,11-*trans* and the 10-*trans* purposes in kilogram scale to 99% are offered. High utilization of the methyl (22).

A concentrate with 8 dation of ricinoleic acid. The use of urea inclusion separate 9-*cis*,11-*trans* and tools for these separation using lipase from *Geotrichum* selectively 9-*cis*,11-*trans* mers (24). A patent has merases from *Propionibacterium* isomerase preparations with 10-*trans*,12-*cis* isomer of

Triacylglycerols for Foo

Free fatty acids and mon probably also to animal t human consumption. CLA lipase has been reported. Incorporation of CLA into (27), butterfat (28,29), analyzed with antioxidants, has since 2000. Flavor and a spoon. Further technical d applicability as well as a attention before CLA can human food.

Summary

CLA supplements for the most of the products contain acids. The history of CLA

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No antioxidant was added

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Next Generation Products

Isomer Purification

All CLA supplements currently offered contain approximately equal amounts of 9-*cis*,11-*trans* and 10-*trans*,12-*cis*. The extra costs of producing a biased isomer product might be justified if beneficial health effects were documented. The 9-*cis*,11-*trans* and the 10-*trans*,12-*cis* isomers of CLA are now available for research purposes in kilogram scale with a purity of ~90%. In small quantities, purities up to 99% are offered. High yields and high purity can be obtained by repeated crystallization of the methyl ester forms in acetone at temperatures as low as -60°C (22).

A concentrate with 83% 9-*cis*,11-*trans* isomer was obtained from gentle dehydration of ricinoleic acid from castor bean oil and subsequent purification steps (4). The use of urea inclusion compounds does not seem to be a feasible procedure to separate 9-*cis*,11-*trans* and 10-*trans*,12-*cis* (23). Enzymes, however, are promising tools for these separations. A 98% concentrate of 9-*cis*,11-*trans* was reported by using lipase from *Geotrichum candidum*. The enzyme was capable of esterifying selectively 9-*cis*,11-*trans* to monohydric alcohols from a mixture of several isomers (24). A patent has been issued on purification and characterization of isomerases from *Propionibacterium acnes* and *Clostridium sporogenes*. The purified isomerase preparations were able to quantitatively isomerize linoleic acid into the 10-*trans*,12-*cis* isomer of CLA (25).

Triacylglycerols for Food Applications

Free fatty acids and monoalkyl esters are applicable to supplement capsules and probably also to animal feed formulations. However, as an ingredient in food for human consumption, CLA is most attractive as a triacylglycerol. A nonspecific lipase has been reported to esterify CLA with glycerol very efficiently (26). Incorporation of CLA into food fats and oils has also been reported for fish oils (27), butterfat (28,29), and corn oil (30). A bottled triacylglycerol product, stabilized with antioxidants, has been available in the health food market in Scandinavia since 2000. Flavor and antioxidants are added to the oil designed to be taken by spoon. Further technical developments of CLA products improving the stability and applicability as well as addressing specific issues of food legislation will require attention before CLA can be made available as an ingredient for animal feed and human food.

Summary

CLA supplements for human consumption have been available since 1995, and most of the products contain between 60 and 80% CLA in the form of free fatty acids. The history of CLA produced for technical purposes dates back almost 100

y, however. The isomer profile of the supplements range from an almost pure 9-*cis*,11-*trans* + 10-*trans*,12-*cis*-50/50 mixture (made in alcohol solvents between 100 and 150°C), to a mixture with four prominent *cis,trans* or *trans,cis* isomers produced in high alkaline water at high temperatures, of which 8-*trans*,10-*cis* and 11-*cis*,13-*trans*-18:2 are produced from 9-*cis*,11-*trans* and 10-*trans*,12-*cis*, respectively, by thermal [1,5] sigmatropic rearrangements of the isomers. Supplements are typically offered as free fatty acids in soft gelatine capsules. Unpublished data on stability of CLA in capsules stored according to ICH guidelines for 2 y did not show any loss of active ingredient.

Acknowledgments

Per Christian Sæbø and his staff at the laboratory of Natural ASA is acknowledged for patient experimental work on CLA production and purification process developments for the last 5 years. Thanks to Prof. emeritus Lars Skattebøl for valuable comments on migration of sigma bonds.

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Conjugated Linoleic Acid Modulates Tissue Levels of Chemical Mediators and Immunoglobulins in Rats

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ABSTRACT: The effects of conjugated linoleic acid (CLA) on the levels of chemical mediators in peritoneal exudate cells, spleen and lung, and the concentration of immunoglobulins in mesenteric lymph node and splenic lymphocytes and in serum were examined in rats. After feeding diets containing either 0 (control), 0.5 or 1.0% CLA for 3 wk, there was a trend toward a reduction in the release of leukotriene B₄ (LTB₄) from the exudate cells in response to the dietary CLA levels. However, CLA did not appear to affect the release of histamine. A similar dose-response pattern also was observed in splenic LTB₄, lung LTC₄, and serum prostaglandin E₂ levels, and the differences in these indices between the control and 1.0% CLA groups were all statistically significant. The reduction by CLA of the proportions of n-6 polyunsaturated fatty acids in peritoneal exudate cells and splenic lymphocyte total lipids seems to be responsible at least in part for the reduced eicosanoid levels. Splenic levels of immunoglobulin A (IgA), IgG, and IgM increased while those of IgE decreased significantly in animals fed the 1.0% CLA diet. This was reflected in the serum levels of immunoglobulins. The levels of IgA, IgG, and IgM in mesenteric lymph node lymphocytes increased in a dose-dependent manner, while IgE was reduced in those fed the higher CLA intake. However, no differences were seen in the proportion of T-lymphocyte subsets of mesenteric lymph node. These results support the view that CLA mitigates the food-induced allergic reaction. *Lipids* 33, 521–527 (1998).

Conjugated linoleic acid (conjugated derivatives of linoleic acid, CLA) exerts diverse physiological effects most of which are favorable to human health. A range of studies has shown a marked alleviating effect of CLA on mammary carcinogenesis (1–4). The mechanism underlying this effect is not yet well understood (5), but continued intake of CLA is not necessarily required for suppression of carcinogenesis (6,7). When considering the diverse effects of CLA, it is reasonable that eicosanoids are involved in the mechanism. The influ-

ence of CLA on the metabolic processes leading from linoleic acid to arachidonic acid and, hence, eicosanoids appears to be related to their desirable effects, since CLA tended to reduce the tissue level of prostaglandin E₂ (PGE₂), a putative candidate for a cancer-promoting effect of dietary n-6 polyunsaturated fatty acids (PUFA) (8). In addition, there is a possibility that CLA itself serves as substrate of enzymatic systems for eicosanoid production, as it is shown to undergo desaturation and elongation similar to linoleic acid (9), although it is unknown whether these metabolites could be converted to eicosanoids.

Since the food allergic reaction can readily be modified by the type of dietary PUFA, either n-6 or n-3 (10,11), it is interesting to know if CLA could modify it. The clinical symptom of food allergy is induced by the production of chemical mediators such as histamine and leukotriene (LT) and PG triggered by allergen-specific immunoglobulin (Ig)E (12,13). Our previous studies showed a reduction by CLA of the serum PGE₂ level (8), which is one of the typical chemical mediators in the allergic reaction (12,13). In this context, Belury and Kempa-Steczko (14) showed that CLA reduces the proportion of linoleic acid dose-dependently in hepatic phospholipid and suggested this may result in modified arachidonate-derived eicosanoid production by extrahepatic tissues. More recently, Wong *et al.* (15) reported that CLA modulates certain aspects of the immune defense such as lymphocyte proliferation in mice, although the effect was not always reproduced possibly because of the dependence on the duration of the feeding period. In the present study, we measured the production of chemical mediators and the level of Ig in rats fed different levels of CLA, either 0.5 or 1.0%.

MATERIALS AND METHODS

Preparation of CLA. CLA was prepared according to the method described by Ip *et al.* (16). In brief, 50 g of linoleic acid, purity >99% (Sigma Chemical Co., St. Louis, MO) was dissolved in 290 g of ethylene glycol containing 15 g of NaOH and heated at 180°C for 2 h under nitrogen. After cooling to room temperature, the content was adjusted to pH 4 and extracted with *n*-hexane. The hexane layer was washed with 5% NaCl, dehydrated with 3-A molecular sieves (Nacalai

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Abbreviations: CLA, conjugated linoleic acid; ELISA, enzyme-linked immunosorbent assay; Ig, immunoglobulin; LT, leukotriene; MLN, mesenteric lymph node; PEC, peritoneal exudate cells; PG, prostaglandin; POD, peroxidase; PUFA, polyunsaturated fatty acid.

Tesqu, Kyoto, Japan) and dried in a rotary evaporator under nitrogen. The purity of CLA was measured by gas-liquid chromatography (Shimadzu GC-17A, Kyoto, Japan) using a Supelcowax 10 column (0.32 mm \times 60 m, film thickness, 0.25 μ m; Supelco Inc., Bellefonte, PA). Column temperature was raised from 150 to 220°C at a rate of 4°C/min. The identification of peaks was carried out by the equivalent chain length method (17) and gas chromatography-mass spectrometry (Jeol Auto MS 50, Tokyo, Japan). The purity of CLA preparation was 80.7% with the following composition in percentage: 9c,11r/9t,11c, 29.8; 10r,12c, 29.6; 9c,11c, 1.3; 10c,12c, 1.4; 9t,11r/10r,12r, 18.6; linoleic acid, 5.6; and others, 13.7.

Animals and diets. The animal experiment adhered to the Kyushu University guidelines for the care and use of laboratory animals. Male, 4-wk-old Sprague-Dawley rats were obtained from Japan Charles River (Atsugi, Japan) and housed individually in a room with controlled temperature and light (20–23°C and lights on 0800–2000 h). After acclimation for 4 d, rats were divided into three groups of 10 rats which were given free access to the experimental diets. The diets were prepared according to the recommendation of the American Institute of Nutrition (AIN-93G diet) (18). The basal diet contained the following ingredients, in g/100 g diet: cornstarch 39.8; casein, 20.0; dextrinized cornstarch, 13.2; sucrose, 10.0; soybean oil, 7.0; AIN-93 mineral mixture, 3.5; AIN-93 vitamin mixture, 1.0; L-cystine, 0.3; choline bitartrate, 0.25; cellulose, 5.0; *tert*-butylhydroquinone, 0.002; and either linoleic acid, 1.0; linoleic acid (Control) and CLA, 0.5 and 0.5; or CLA, 1.0. Thus, LA or CLA was added at the expense of soybean oil in the AIN-93G diet. The fatty acid composition calculated from the composition of individual oils is given in Table 1. Body weight and food intake were recorded every other day. After 3 wk of feeding, five rats were used for collection of the exudate cells and the remaining five rats for other analyses. Blood was withdrawn from the abdominal aorta under light diethyl ether anesthesia and tissues were immediately excised.

Preparation of peritoneal exudate cells (PEC). The method described by Matsuo *et al.* (19) was adopted for the preparation of PEC. Tyrode buffer, consisting of 137 mM NaCl, 2.7 mM KCl, 0.4 mM $\text{NaH}_2\text{PO}_4 \cdot 2\text{H}_2\text{O}$, 1 mM $\text{MgCl}_2 \cdot 6\text{H}_2\text{O}$, 12 mM NaHCO_3 , 1.8 mM $\text{CaCl}_2 \cdot 2\text{H}_2\text{O}$, 5.6

mM D-glucose and 0.1% bovine serum fraction V (Boehringer Mannheim GmbH, Mannheim, Germany), pH 7.4, was injected into the rat peritoneal cavity (6 mL/100 g body weight), and the abdomen was gently massaged for 2 min. Then, the cavity was opened, and the buffer containing PEC was recovered with a plastic pipet. The fluid was centrifuged at $200 \times g$ for 5 min at 4°C. The supernatant was discarded and the cell pellet was resuspended in Tyrode buffer.

Measurement of leukotriene B_4 (LTB_4) and histamine. LTB_4 was measured as described elsewhere (20–22). PEC (2×10^6 cells) were suspended in Tyrode buffer containing 5 mM calcium ionophore A23187 (Sigma Chemical Co.). After incubating for 20 min at 37°C, 50 mL of the acetonitrile/methanol mixture (6:5, vol/vol) and 50 ng of PGB_2 (Sigma Chemical Co.), as the internal standard, were added. The mixture was kept at –20°C for 30 min and then centrifuged at $1,000 \times g$ for 10 min. The supernatant was filtered through a 4-GV 0.22 μ m filter (Millipore Corp., Tokyo, Japan). LTB_4 was measured by reversed-phase high-performance liquid chromatography (HPLC) (SCL-10A; Shimadzu Co., Kyoto, Japan) equipped with an ODS-A column (150 \times 6.0 mm, 5 μ L particle size; YMC, Kyoto, Japan). A mixture of acetonitrile/methanol/water (30:25:45, by vol) containing 5 mM $\text{CH}_3\text{COONH}_4$ and 1 mM disodium EDTA, pH 5.6, was used as a mobile phase with a flow rate of 1.1 mL/min. LTB_4 and PGB_2 were detected by absorbance at 280 nm (SPD-10A; Shimadzu Co.). Quantitation of LTB_4 was achieved by comparing the peak area of LTB_4 with that of PGB_2 . Histamine content in the culture supernatant was measured fluorometrically (19,23). The intracellular content of histamine also was measured after disrupting the cells by sonication.

Preparation of spleen and mesenteric lymph node (MLN) lymphocytes. Spleen and MLN were excised immediately after withdrawing blood from the aorta, and the tissues were immersed in RPMI 1640 medium (Nissui Pharmaceutical Co., Tokyo, Japan) (24,25). The lymphocytes were rinsed three times with the RPMI 1640 medium and filtered to remove tissue scum. To remove fibroblasts, cell suspension was incubated for 30 min at 37°C. Then, 5 mL of the resulting cell suspension was layered on 4 mL of Lympholyte-Rat (Cedarlane, Hornby, Canada) and centrifuged at $1,500 \times g$ for 30 min. The lymphocyte band at the interface was recovered, and the cells were rinsed again. The lymphocytes were cultured in 10% fetal bovine serum (Intergen, Purchase, NY) in RPMI 1640 medium at a cell density of 2.5×10^6 cells/mL with or without 2.5 μ g/mL of lipopolysaccharide (Bacto lipopolysaccharide B, *Escherichia coli* 026:B6; Difco Laboratories, Detroit, MI). After incubation at 37°C for 24 and 72 h, the concentrations of IgA, IgG, IgM, and IgE were measured by an enzyme-linked immunosorbent assay (ELISA) (26).

T-cell population analysis. Spleen and MLN lymphocytes were analyzed as CD4^+ - and CD8^+ -cells by using fluorescein-labeled mouse anti-CD4 (W3/25, mouse IgG1) or phycoerythrin-labeled mouse anti-CD8 (MRC OX-8, mouse IgG1) (both from Serotec Ltd., Kidlington, Oxford, United King-

TABLE 1
Fatty Acid Composition of Dietary Fat*

Fatty acid	Group		
	Control	0.5% CLA	1.0% CLA
16:0	9.1	9.0	9.0
18:0	3.2	3.42	3.2
18:1	20.4	20.3	20.1
CLA	—	6.4	12.9
18:2	59.7	53.6	47.4
18:3	7.5	7.5	7.4

*Fatty acid composition was calculated from the composition of individual component fats, soybean oil, linoleic acid, and conjugated linoleic acid (CLA).

dom) (23,25). The stained lymphocytes were fixed with 2% paraformaldehyde and analyzed with the EPICS Profile II flowcytometer (Coulter Electronics Ltd., Luton, United Kingdom).

Measurement of serum and culture supernatant Ig by ELISA. Measurements of total Ig were executed using sandwich ELISA methods (24,25). Goat anti-rat IgE, rabbit anti-rat IgG (Fab')₂, goat anti-rat IgM (all from Biosoft, Paris, France), and mouse anti-rat IgA (Zymed Lab, San Francisco, CA) were used to fix respective Ig. These antibodies were diluted 1,000 times with 50 mM carbonate-bicarbonate buffer (pH 9.6), and each well of 96-well plates was treated with 100 μ L of the solution for 1 h (2 h for IgA) at 37°C. After blocking with 300 μ L of the blocking solution overnight at 4°C, each well was treated with 100 μ L of the diluted serum or culture supernatant for 1 h (2 h for IgA) at 37°C. Bound IgA was detected by reacting stepwise with 100 μ L of peroxidase (POD)-conjugated rabbit anti-rat IgA (1,000 times dilution; Zymed) at 37°C for 2 h, IgG with 100 μ L of POD-conjugated rabbit anti-rat IgG (Fab')₂ (2,000 times dilution; Cappel, West Chester, PA), and IgM with 100 μ L of POD-conjugated goat anti-rat IgM (1,000 times dilution, Cappel) at 37°C for 1 h. Wells were rinsed three times with Tween-20 in phosphate-buffered saline between each step. After incubation at 37°C for 15 min with 100 μ L of 1.5% oxalic acid, absorbance at 415 nm was measured with an MPR-A4i ELISA reader (Tosoh, Tokyo, Japan). The bound IgE was detected by reacting with biotin-conjugated mouse anti-rat IgE (2,000 times dilution; Betyl, Montgomery, TX) followed by POD-conjugated avidin (5,000 times dilution, Zymed Lab) at 37°C for 1 h.

Statistical analysis. Data were analyzed by one-way analysis of variance followed by Duncan's new multiple-range test to identify significant differences (27). Values in the text are means \pm SE.

RESULTS

Growth performance and tissue weight. As shown in Table 2, there was no difference in food intake and growth of rats for 3 wk among the groups. Thus, the feed efficiency also was comparable among the groups (mean values 0.41 to 0.42). Among tissues weighed, there was a tendency of increasing liver weight and decreasing perirenal adipose tissue weight by dietary CLA and the difference between the linoleic acid and 1.0% CLA groups was significant.

Release of chemical mediators from PEC. PEC isolated from rats fed linoleic acid or CLA were incubated with or without calcium ionophore A23187, and the concentrations of histamine and LTB₄ were measured in the medium. The content of histamine in the cells also was measured to estimate the cellular histamine contents. As shown in Figure 1, the effect of CLA on the release of histamine in PEC was diverse, and there was no significant difference in any of the parameters measured. However, the amounts of histamine stored in the cells tended to decrease with an increasing dietary level of CLA. There was a trend toward a reduction in

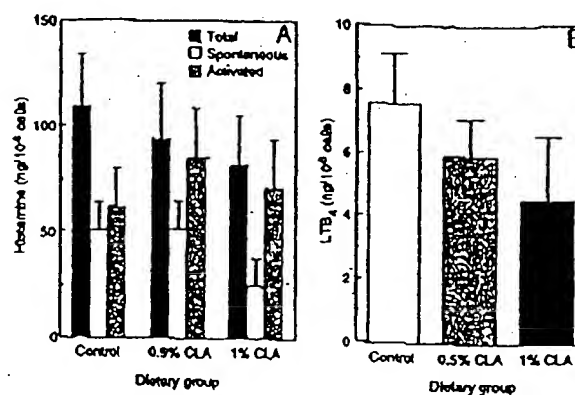


FIG. 1. Effect of dietary conjugated linoleic acid (CLA) on histamine content and release (A) and leukotriene B₄ (LTB₄) release (B) in rat peritoneal exudate cells. Means \pm SE of five rats. Histamine release was measured in the presence and absence of calcium ionophore A23187. Total, total amounts of histamine in the cells; Spontaneous, the amount of histamine released during incubation without calcium ionophore A23187; Activated, the amount of histamine which was released from the cells when treated with A23187.

LTB₄ release in response to the dietary level of CLA, but the difference was not significant.

Tissue eicosanoid levels. The effect of CLA on LTB₄ and LTC₄ levels of spleen and lung is shown in Figures 2 and 3, respectively. CLA dose-dependently reduced the level of splenic LTB₄, and the difference between the control and 1% CLA groups was significant. No effect of CLA on the splenic LTC₄ level was observed. However, the concentration of LTC₄ in lung was reduced significantly by CLA even at the 0.5% dietary level. A trend of the dose-dependent reduction of LTB₄ also was observed, but the difference was not significant. The results of the levels of spleen and serum PGE₂ are summarized in Figure 4. CLA significantly reduced the concentration of serum PGE₂, while there was no effect of CLA on the splenic level of PGE₂.

Fatty acid compositions of PEC and splenic lymphocyte lipids. The PUFA composition of PEC and splenic lympho-

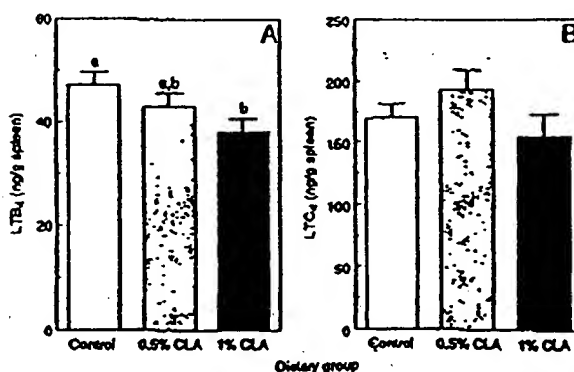


FIG. 2. Effect of dietary CLA on the concentration of splenic (A) LTB₄ and (B) leukotriene C₄ (LTC₄). Mean \pm SE of five rats. Values without a common letter are significantly different at $P < 0.05$. For abbreviations see Figure 1.

TABLE 2
Effects of CLA on Growth and Tissue Weights of Rats^a

Parameter	Group		
	Control	0.5% CLA	1.0% CLA
Initial body weight (g)	102 ± 1	101 ± 1	102 ± 1
Final body weight (g)	170 ± 2	166 ± 3	162 ± 4
Food intake (g/day)	19.1 ± 0.2	18.9 ± 0.3	18.6 ± 0.3
Tissue weight (g/100 g body weight)			
Liver	4.17 ± 0.09 ^a	4.11 ± 0.09 ^{a,b}	4.54 ± 0.07 ^b
Kidney	0.85 ± 0.03	0.86 ± 0.03	0.87 ± 0.05
Perirenal adipose tissue	1.41 ± 0.07 ^a	1.09 ± 0.09 ^{a,b}	0.97 ± 0.14 ^b
Heart	0.40 ± 0.02	0.34 ± 0.04	0.34 ± 0.04
Lung	0.48 ± 0.02	0.52 ± 0.02	0.49 ± 0.01
Spleen	0.22 ± 0.01	0.22 ± 0.01	0.25 ± 0.02
Brain	0.66 ± 0.02	0.70 ± 0.01	0.70 ± 0.01
Testis	0.96 ± 0.04	0.87 ± 0.10	1.00 ± 0.03

^aMean ± SE of 5 rats. Control group received 1.0% linoleic acid; 0.5% CLA group, 0.5% each of linoleic and CLA; and 1.0% CLA group, 1.0% CLA, respectively. Values without a common superscript letter (a,b) are significantly different at $P < 0.05$. For abbreviation see Table 1.

cyte total lipids is shown in Table 3. There was a dose-dependent reduction by dietary CLA of all n-6 PUFA, 18:2, 20:3, 20:4 and 22:4 in PBC lipids, while there was no difference in the proportion of n-3 PUFA, 22:6 among the groups. A clearer change in these n-6 PUFA was shown in splenic lymphocyte total lipids, and the reduction of 20:4n-6 was significant on a 1.0% CLA diet. Docosa-hexaenoic acid also tended to decrease with dietary CLA. The decreasing trend of all PUFA in CLA-fed rats was mainly attributable to a moderate increase in major saturated fatty acids, and oleic acid tended to decrease similar to PUFA (data not shown).

Serum thiobarbituric acid value. The concentration of thiobarbituric acid-reactive substance in serum was not modified by dietary CLA, and the values were within 4.1 to 5.5 ng/mL serum in all groups of rats.

Serum Ig levels. As shown in Figure 5, CLA increased the concentration of IgA, IgG and IgM, while decreasing that of IgE in serum. The difference between the control and 1.0% CLA groups was significant in these Ig.

Ig levels in spleen and MLN lymphocytes. Table 4 shows

the Ig levels in the medium of rat spleen and MLN lymphocytes cultured for 72 h with or without lipopolysaccharide. Irrespective of the presence or absence of lipopolysaccharide, CLA showed no detectable effects on the Ig levels in spleen lymphocytes except for those of IgM after incubation with lipopolysaccharide, where CLA increased it in a dose-dependent manner. Under the similar situation, CLA increased the concentration of IgA, IgG, and IgM in MLN lymphocytes. The magnitude of the increase was particularly marked at the dietary CLA level of 1.0%. In contrast, there was a significant reduction of the IgE level when the cells from rats fed a 1% CLA diet were incubated with lipopolysaccharide in comparison with the control. A similar response to CLA also was observed even when these cells were incubated for 24 h (data not shown).

Subsets of MLN lymphocytes. The proportion of T-lymphocyte populations of MLN was analyzed as CD4⁺ and CD8⁺ subsets. There were no effects of CLA on their relative proportions (CD4⁺/CD8⁺ ratio; 2.6 ± 0.3 , 2.4 ± 0.2 , and 2.8 ± 0.1 for the control, 0.5% CLA, and 1.0% CLA, respectively).

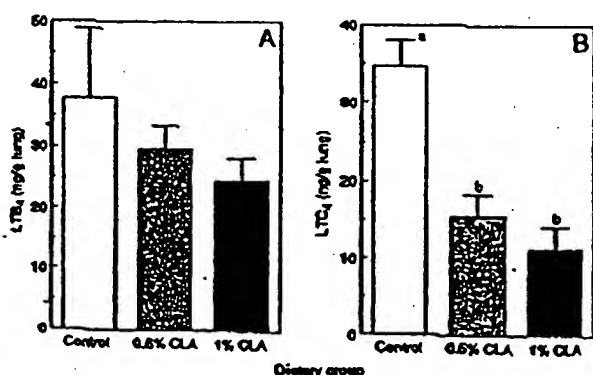


FIG. 3. Effect of dietary CLA on the concentration of lung (A) LTB₄ and (B) LTC₄. Mean ± SE of five rats. Values without a common letter are significantly different at $P < 0.05$. For abbreviations see Figures 1 and 2.

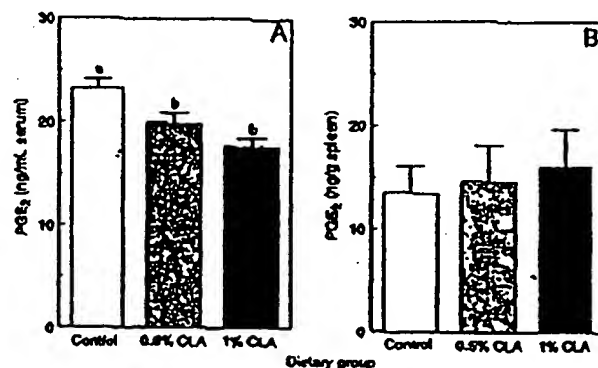


FIG. 4. Effect of dietary CLA on the concentration of (A) serum and (B) spleen prostaglandin E₂ (PGE₂). Mean ± SE of five rats. Values without a common letter are significantly different at $P < 0.05$. For other abbreviation see Figure 1.

TABLE 3
Effects of CLA on Polyunsaturated Fatty Acid Compositions
of Peritoneal Exudate Cells and Spleen Lymphocyte
Total Lipids of Rats^a

Cells and fatty acid	Group		
	Control	0.5% CLA	1.0% CLA
	(wt%)		
Peritoneal exudate cells			
18:2n-6	5.5	5.3	4.2
20:3n-6	0.8	0.7	n.d.
20:4n-6	12.7	11.3	9.0
22:4n-6	5.6	5.3	4.2
22:6n-3	0.6	0.6	0.5
CLA			
9c,11c,9c,11c	n.d.	0.1	0.2
10c,12c	n.d.	0.2	0.2
Spleen lymphocytes			
18:2n-6	12.2 ± 0.8	10.4 ± 0.9	9.3 ± 0.9
20:3n-6	1.6 ± 0.2	1.3 ± 0.3	0.9 ± 0.1
20:4n-6	20.2 ± 0.8 ^a	15.4 ± 1.3 ^{a,b}	14.7 ± 1.7 ^b
22:4n-6	2.5 ± 0.1	2.0 ± 0.2	1.9 ± 0.2
22:6n-3	1.2 ± 0.1	0.8 ± 0.1	0.8 ± 0.1
CLA			
9c,11c,9c,11c	0.1 ± 0.0	0.1 ± 0.0	0.2 ± 0.0
10c,12c	n.d.	0.2 ± 0.0	0.2 ± 0.0

^aValues are means of two pooled samples from two and three rats each for the exudate cells, and means ± SE of three, five, and five rats for control, 0.5% CLA, and 1.0% CLA, respectively. Values without a common superscript letter (a,b) are significantly different at $P < 0.05$; n.d., not detected. For other abbreviation see Table 1.

DISCUSSION

The pathway from linoleate to arachidonate and then eicosanoids is crucial to a range of metabolic diseases (28,29). Food allergy is one such disorder, and it is known that some eicosanoids are involved as chemical mediators in the manifestation of clinical symptoms of hypersensitivity (12,13). The inhibitors of LT production have now been clinically adopted (30,31). However, less is known of the effect that food components exert on this process. Although several food components have been shown to reduce eicosanoid production

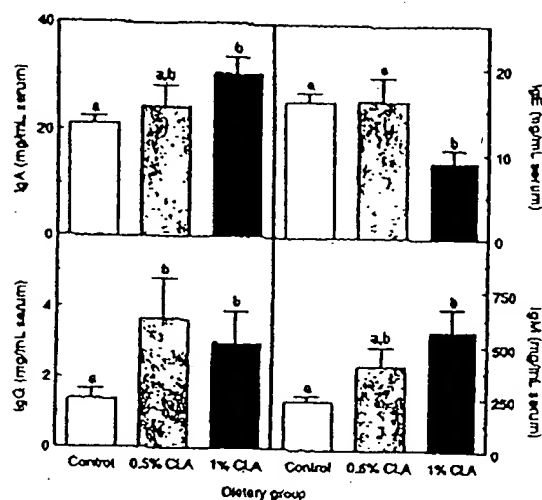


FIG. 5. Effect of dietary CLA on the concentration of serum immunoglobulins (Ig). Mean ± SE of five rats. Values without a common letter (a,b) are significantly different at $P < 0.05$. For abbreviation see Figure 1.

in vitro, in most cases it is practically unsatisfactory because of the limited efficacy (21,22). The results of the present study showed that CLA effectively controlled the production of LTB_4 , LTC_4 , and PGE_2 . CLA significantly reduced LTC_4 production in the lung but not in the spleen. A similar tissue-specific reduction of LTC_4 was observed in rats given sesamin and α -tocopherol simultaneously, while in the spleen LTB_4 but not LTC_4 was reduced (21,22). These observations suggest a complex interaction between dietary fat and antioxidants in the LT-producing system.

Numbers of animal studies showed that dietary PUFA effectively modify the production of eicosanoids, and there is an interaction between n-6 and n-3 PUFA (32). PUFA of the n-3 family suppress the production of eicosanoids from arachidonic acid and exert a substantial suppressing effect on carcinogenesis in breast and colon (33,34). However, the anticarcinogenic effect of n-3 PUFA is far less than that of CLA (2-4). Eicosanoid production is known to be dependent on

TABLE 4
Effects of CLA on the Immunoglobulin Production in Splenic and Mesenteric Lymph Node Lymphocytes of Rats^a

Immunoglobulin	Without lipopolysaccharide			With lipopolysaccharide		
	Control	0.5% CLA	1% CLA	Control	0.5% CLA	1% CLA
Spleen (ng/mL)						
IgA	3.75 ± 1.23	4.83 ± 0.99	3.76 ± 0.96	9.74 ± 2.45	13.6 ± 3.27	8.30 ± 2.50
IgG	51.0 ± 4.6	53.8 ± 2.3	61.5 ± 2.8	68.1 ± 2.4	71.9 ± 1.9	74.4 ± 1.9
IgM	223 ± 22	228 ± 6	246 ± 9	311 ± 9 ^A	348 ± 8 ^B	394 ± 6 ^C
IgE	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
Mesenteric lymph node (ng/mL)						
IgA	1.65 ± 0.13 ^A	4.78 ± 1.77 ^B	5.05 ± 0.10 ^B	2.91 ± 0.23 ^A	8.72 ± 0.90 ^C	22.3 ± 0.7 ^C
IgG	n.d.	3.08 ± 0.69 ^B	28.1 ± 4.38 ^B	n.d.	4.64 ± 0.11 ^A	31.9 ± 4.1 ^B
IgM	1.86 ± 0.34 ^A	4.74 ± 0.50 ^A	96.6 ± 13.4 ^B	2.85 ± 0.44 ^A	6.36 ± 0.48 ^B	122 ± 9 ^C
IgE	3.81 ± 0.32	4.02 ± 0.33	3.64 ± 0.47	4.81 ± 0.17 ^A	4.52 ± 0.29 ^A	3.74 ± 0.21 ^B

^aMeans ± SE of five rats. Values without a common superscript letter (A,B,C,a,b,c) are significantly different at $P < 0.05$. The lymphocytes were incubated with or without lipopolysaccharide for 72 h, and the concentration of immunoglobulins (Ig) in the supernatant was measured; n.d., not detected.

the substrate availability (35). CLA reduced the proportion of n-6 PUFA including arachidonic acid in the immune cells as observed in the liver and other tissues (8,14). Because of the limited availability of PEC samples for fatty acid analysis, they were analyzed as two pooled samples from two and three rats each. Though the number of analysis may not permit us to draw a definite conclusion, it seems likely that fatty acid composition of PEC also responded similarly as in spleen lymphocytes. This reduction was at least responsible for the reduced production of LT and PG in these cells. CLA may affect metabolic interconversion of fatty acids in the liver that may ultimately result in modified fatty acid composition and arachidonate-derived eicosanoid production in extrahepatic tissue (14). However, more direct participation of the metabolites of CLA cannot be ruled out (9,36). Therefore, the present study added possible usefulness of CLA for controlling the allergic reaction caused by food. Since the effect of CLA on Ig production differed between MLN lymphocytes and spleen lymphocytes, the analysis of the fatty acid composition of the former cells may provide a clue to understanding the mechanism of action.

In contrast to the eicosanoid production, the level of histamine released from PEC, which reflects the mast cell degranulation by a receptor-independent pathway, apparently was not modified by CLA and more directly the fatty acid composition of membrane phospholipids. Engels *et al.* (37) observed that the type of dietary fats and thus the change in the fatty acid composition of mast cell phospholipids did not influence the cell degranulation process. CLA is reported to be incorporated into triglyceride more preferably than phospholipids in tumor cells (7). Thus, CLA may not substantially influence the fatty acid composition of membrane phospholipids and hence, the structure and function of the membrane. In such a situation, the degranulation of the mast cells may not be modified largely.

An interesting observation is that CLA regulates the Ig production class specifically. Food allergy reaction is initiated by the production of allergen-specific IgE (12,13). IgA, in contrast, serves as an antiallergic factor by interfering with the intestinal absorption of allergen, and IgG also works as an antiallergic factor through the competition with binding of allergen to the receptor on the surface of the target cells such as mast cells and basophiles (12,13). CLA increased the production of IgA and IgG, while reducing that of IgE in lymphocytes, in particular MLN lymphocytes irrespective of the presence or absence of lipopolysaccharide, a cell activator. The response of splenic lymphocytes to CLA was less clear except for a slight but significant increase in IgM after lipopolysaccharide activation. However, the response pattern similar to MLN lymphocytes was observed in serum, indicating that CLA can modify the Ig levels preferably even on a whole-body basis. Bile acids (24) and unsaturated fatty acids (25) also regulate antibody production class specifically, but in a manner contrasted from that of CLA. These compounds may promote the allergic response through an increase in IgE production and a reduction in IgA and IgG production. It is

plausible that the production of IgE and of IgA and IgG are at least reciprocally regulated. Thus, in addition to the favorable effect on the eicosanoid production, CLA was expected to mitigate the food allergic reaction.

The amounts of CLA ingested by rats of the present study corresponded to approximately 30 and 60 mg/100 g body weight for 0.5 and 1.0% CLA diets, respectively. These amounts were pharmacological when extrapolated to human, 18 and 36 g/60 kg body weight/day. However, as in the case of weight reduction in man, approximately 3 g/d for 2 to 3 mon, a prolonged ingestion may produce a favorable effect even at a lower dose. A long-term trial with a lower dietary level of CLA merits further study.

In conclusion, CLA produced a situation favorable for mitigation of food allergic reaction. Since the effect was seen at a dietary level as low as 0.5 or 1.0%, it is likely that CLA can strongly regulate multiple metabolic processes. Thus, the clinical application of CLA is warranted. Studies with immunized animals will provide more direct information regarding this issue.

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X. RELATED PROCEEDINGS APPENDIX

A copy of the Decision On Appeal mailed July 20, 2005, for Appeal No. 2005-0150 for U.S. Patent Application Serial Nos. 09/271,024, filed March 17, 1999, is provided with the present appeal brief.

A copy of the Decision On Appeal mailed August 30, 2005, for Appeal No. 2005-1578 for U.S. Patent Application Serial Nos. 09/132,593, filed August 11, 1998, is provided with the present appeal brief.

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

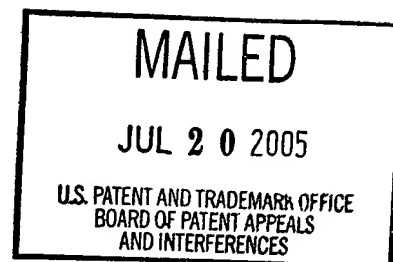
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ASGEIR SAEBO, CARL SKARIE,
DARIA JEROME, and GUDMUNDER HAROLDSSON

Appeal No. 2005-0150
Application No. 09/271,024

HEARD: June 7, 2005



Before WILLIAM F. SMITH, ADAMS and GRIMES, Administrative Patent Judges.

ADAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 5-8 and 13-17, which are all the claims pending in the application.¹

Claims 5 and 13 are illustrative of the subject matter on appeal and are reproduced below:

5. A biologically active acylglycerol composition comprising a plurality of acylglycerol molecules wherein the acylglycerol molecules comprise substituents R1, R2, and R3 attached at the positions of the OH-

¹ While the examiner states (Answer, page 2), "[t]he statement of the status of the claims contained in the brief is correct," we note that appellants' Brief does not address the status of claim 12. For clarity, we note that appellants cancelled claim 12, along with claims 1-4 and 9-11 in the amendment (see page 1) received November 14, 2000.

groups of a glycerol backbone, and wherein R1, R2 and R3 are selected from the group consisting of a hydroxyl group and an octadecadienoic acid, said composition characterized in containing at least approximately 30% t10,c12 octadecadienoic acid, at least approximately 30% c9,t11 octadecadienoic acid, and about less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid at positions R1, R2 and R3, wherein said percentages are peak area percentages as determined by gas chromatography.

13. A composition comprising a prepared food product containing a biologically active acylglycerol composition comprising a plurality of acylglycerol molecules wherein the acylglycerol molecules comprise substituents R1, R2, and R3 attached at the positions of the OH-groups of a glycerol backbone, and wherein R1, R2 and R3 are selected from the group consisting of a hydroxyl group and an octadecadienoic acid, said composition characterized in containing at least approximately 30% t10,c12 octadecadienoic acid, at least approximately 30% c9,t11 octadecadienoic acid, and about less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid at positions R1, R2 and R3, wherein said percentages are peak area percentages as determined by gas chromatography.

The references relied upon by the examiner are:

Pariza et al. (Pariza)	5,017,614	May 21, 1991
Nilsen et al. (Nilsen)	5,885,594	Mar. 23, 1999
Cain et al. (Cain)	WO 97/18320	May 22, 1997

GROUND OF REJECTION

Claims 5-8 stand rejected under 35 U.S.C. 102(a) as anticipated by Cain.

Claims 13-17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cain.

Claims 5-8 and 13-17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nilsen in view of Cain and Pariza.

We reverse.

DISCUSSION

According to the examiner (Answer, page 3), the basis for each rejection is "fully set forth in prior office action, paper No. 26, mailed March 26, 2003." However, upon inspection of the Office Action mailed March 26, 2003 (see page 2), we find that instead of providing a statement of the rejection, the examiner refers to the "reasons set forth in the prior office action." It is in the Office Action mailed August 13, 2002 where we find a statement of each rejection on this record. We remind the examiner, as set forth in § 1208(A) of the Manual of Patent Examining Procedure

Examiners may incorporate in the answer their statement of the grounds of rejection merely by reference to the final rejection (or a single other action on which it is based, MPEP § 706.07). Only those statements of grounds of rejection appearing in a single prior action may be incorporated by reference. An examiner's answer should not refer, either directly or indirectly, to more than one prior Office action. Statements of grounds of rejection appearing in actions other than the aforementioned single prior action should be quoted in the answer.

THE REJECTION UNDER 35 U.S.C. § 102:

According to the examiner (page 3, Office Action, mailed August 13, 2002),

Cain teaches [example 6] an acyglycerol composition comprising mono-[.] di-[.] and tri-glyceride[s] wherein the fatty acid[s] are c9,t11 CLA^[2] or t10, c12 CLA, wherein the total CLA in the composition is about ... [61.9%], of which 48.9% was the cis 9, trans 11 isomer and 51.1% was the trans 10, cis 12 isomer. No other CLA isomers are indicated, or suggested to be present in the composition.

² According to Cain (page 1), CLA refers to compositions containing free conjugated linoleic acid. Cf. appellants' specification (page 9), "[a]s used herein, 'conjugated linoleic acid' or 'CLA' refers to any conjugated linoleic acid or octadecadienoic free fatty acid."

"Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim." Gechter v. Davidson, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). "Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Upon review of Cain we agree with the examiner that example 6 of Cain teaches a composition comprising "61.9% of conjugated linoleic acid (CLA) of which 48.9% was the cis 9, trans 11 isomer and 51.1% was the trans 10, cis 12 isomer." In addition, we agree with the examiner that Cain is silent regarding the presence of other CLA isomers that may be present in the composition. Thus, the composition taught by Cain appears, in the first instance, to meet all the limitations of appellants' claimed invention.

Accordingly, we find that the examiner has established a sufficient evidentiary basis to shift the burden to appellants to demonstrate that Cain does not anticipate their claimed invention. In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) ("when the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not."). In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d 660, 664, 169 USPQ 563, 566 (CCPA 1971).

In response, appellants assert (Brief, page 5), Cain "does not anticipate [c]laim[s] 5-8 because the methods utilized by Cain et al. cannot produce the claimed CLA isomer profile (i.e., a CLA composition containing less than 1%

total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid isomers)." In support of this assertion, appellants direct our attention to the Saebo Declaration, which according to appellants "establishes that the compositions of Cain et al. necessarily include the 8,10 and 11,13 isomers of CLA." According to the Saebo Declaration (paragraph 4),

In the repeat of Cain, the conjugation conditions were the same as those described in Example 6 of WO97/18320. The results of the conjugation reactions were analyzed by GC-MS. ... [T]his conjugation method resulted in a conjugated linoleic acid composition comprising approximately 3.49% c11,t13 CLA and 2.24% t9,t11 and t10,t12 CLA. The t8,c10 isomer co-elutes with the c9,t11 isomers, but almost always occurs in a one to one proportion to the c11,t13 isomer.

From this, appellants assert (Brief, page 8), "[a]pplicants followed the exact instructions of Cain and analyzed the product. The [a]pplicants did not fail to obtain CLA. Indeed, they obtained CLA with the isomers described by Cain et al. However, the fact remains that the CLA also contained other isomers that are not mentioned by Cain." According to appellants (Brief, bridging paragraph, pages 8-9), Cain's "silence concerning the presence of the isomers cannot be equated with the absence of the isomers. ... [Cain] does not specifically define CLA to include non-active CLA isomers." On this point the Saebo Declaration states (paragraph 5),

[t]he [e]xaminer states ... that Cain teaches CLA compositions that are composed of 48.9% c9,t11 and 51.1% t10,c12 CLA, and that the analysis was carried out with gas chromatography and no other isomer of conjugated linoleic acid is detected. However, this does not mean that the other isomers were not present, as was found in my repeat of Cain. This discrepancy is explainable by the facts that 1) methods for the analysis of CLA compositions in 1996 were rather crude and 2)

Cain may have simply chosen not to include non-active isomers when reporting their results.

In addition, appellants direct our attention to Sugano³. Brief, bridging paragraph, pages 10-11.⁴ According to appellants (id.), Sugano "isomerized linoleic acid [under] conditions similar to those described by Cain...." However, as appellants explain (id.), in contrast to the results reported by Cain, Sugano's "resulting CLA preparation contained the following CLA isomers: 29.8% c9,t11/t9,c12; 1.3% c9,c11; 1.4% c10, c12; 18.6% t9,t11/t10,t12; 5.6% linoleic acid; and 13.7% other isomers." In view of the foregoing, appellants assert (Brief, page 11), "[i]n contrast to the simplified analysis presented in Cain et al., isomerization of CLA results in the production of many different isomers, not just the desired c9,t11 and t10,c12 isomers."

Appellants also direct out attention (Brief, page 11), to examples 1-4 of their specification in further support of their position that the methodology taught by Cain would have resulted in the production of CLA compositions that do not meet the limitations of their claimed invention. According to appellants (id., emphasis removed),

[t]hese examples compare non-aqueous alkali isomerization under high or low temperatures and aqueous alkali isomerization under high or low temperatures. The important fact to note is that

³ Sugano et al. (Sugano), "Conjugated Linoleic Acid Modulates Tissue Levels of Chemical Mediators and Immunoglobulins in Rats," Lipids, Vol. 33, No. 5, pp. 521-527 (1998).

⁴ Appellants also direct out attention to "Chapter 5 of the book Advances in Conjugated Linoleic Acid Research, Volume 2, J. Sebedio, W.W. Christie, and R. Adolf, Eds., AOCS Press, Champaign, IL, 2002...." See Brief, bridging sentence, pages 9-10. This reference, however, was published after appellants' March 17, 1999 filing date. Publications dated after the filing date providing information publicly first disclosed after the filing date generally cannot be used to show what was known at the time of filing. See In re Gunn, 537 F.2d 1123, 1128, 190 USPQ 402, 405 (CCPA 1976). Accordingly, we have not considered this reference.

each reaction, even the low temperature non-aqueous alkali isomerization reaction (Example 1, Table 6), produced a distribution of the expected isomers, not just the c9,t11 and t10,c12 isomers.

From this appellants assert (id., emphasis removed), "the compositions of Cain necessarily contained levels [of] 8,10; 11,13; and trans,trans isomers that do not meet the[ir] claimed levels."

In response, the examiner appears to back away from his original finding (page 3, Office Action, mailed August 13, 2002) that "[n]o other CLA isomers are indicated, or suggested to be present in the composition" taught by Cain. In response to appellants' arguments, and contrary to his original inference, the examiner asserts (Answer, page 4), "nowhere in Cain states that 'conjugated linoleic acid' are exclusively for c9, t11; and t10, c12 isomers." Thus, the examiner appears to concede that the CLA compositions taught by Cain would be expected to contain additional CLA isomers other than the c9, t11; and t10, c12 isomers identified by Cain.

The examiner maintains, however, "there is no convincing evidence showing that Cain's composition has the amount of the particular isomers herein claimed." Apparently the examiner is referring to the requirement of appellants' claimed invention that the acylglycerol composition comprise "about less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid at positions R₁, R₂ and R₃" While the examiner appreciates that the composition taught by Cain would contain CLA isomers other than t10,c12 and c9,t11 octadecadienoic acid, the examiner makes no

attempt to explain why the compositions taught by Cain would necessarily contain "less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid at positions R₁, R₂ and R₃ ..." as required by appellants' claimed invention. The only evidence on this record that addresses this point is appellants'. As discussed above, both the Saebo Declaration (using the same methodology as set forth in Cain), and the Sugano reference (using a similar methodology as set forth in Cain), resulted in a CLA composition that contained more than "about less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans-trans octadecadienoic acid at positions R₁, R₂ and R₃" In our opinion, the evidence of record weighs in favor of appellants, and rebuts the examiner's prima facie case of anticipation.

Accordingly, we reverse the rejection of claims 5-8 under 35 U.S.C. § 102(a) as anticipated by Cain.

THE REJECTIONS UNDER 35 U.S.C. § 103:

Cain:

According to the examiner (page 3, Office Action, mailed August 13, 2002), "Cain teaches an acylglycerol composition comprising mono-[.] di-[.] and tri-glyceride[s] wherein the fatty acids are c9,t11 CLA or t10, c12 CLA, no other CLA isomers are indicated, or suggested to be present in the composition. See, example[s] 6-10 at page[s] 16-22." The examiner finds that Cain characterize

all the fatty acid[s] through gas chromatography and ... identified the CLA. For example, in example 6, ... [Cain] state[s] "[t]he fatty

acid composition of the product, as determined by FAME GC, contained 63.8% CLA, of which 48.9% was the cis 9, trans 11 isomer and 51.1% was the trans 10, cis 12 isomer." See page 16, lines 17-21.

From this the examiner asserts (id.), "the rest of the fatty acids are not CLA, and the CLA is composed entirely of cis 9, trans 11[]isomer and trans 10, cis 12 isomer."

In addition, the examiner finds (Answer, bridging paragraph, pages 3-4) that Cain teaches the use of the acylglycerol composition "in various food products including ice cream, soup, and bakery products. See, particularly, examples 12-17 at page 24-35 and the claims." The examiner recognizes, however, that Cain does not teach "that each of the isomers must be 30% or more of the total CLA moieties for the particular food products." Answer, page 4. Nevertheless, the examiner asserts (id.),

it would be obvious to employ such [a] CLA composition in the food product, since such [a] CLA composition [comprising 48.9% was the cis 9, trans 11 isomer and 51.1% was the trans 10, cis 12 isomer] has been expressly disclosed by Cain [for use in a food product]. See, ... example 6.

In response, appellants assert (Brief, page 12), "[a]s established above [with regard to the rejection under 35 U.S.C. 102(a)], the compositions of Cain necessarily contain levels [of] 8,10; 11,13; and trans,trans isomers that do not meet the claimed levels. Thus, Cain et al. does not render the claims obvious." Similarly, the examiner relies on his response to the anticipation rejection. See Answer, page 6.

Accordingly, for the reasons set forth above, we find that the evidence of record weighs in favor of appellants. Therefore, the rejection of claims 13-17 under 35 U.S.C. § 103 as being unpatentable over Cain is reversed.

Nilsen in view of Cain and Pariza:

According to the examiner (page 4, Office Action, mailed August 13, 2002), Nilsen "teach a composition comprising 90-100[]% of an acylglycerol compound wherein the fatty acid radical is a conjugated polyunsaturated fatty acid." In this regard, the examiner finds (*id.*), "[t]he preferred conjugated polyunsaturated fatty acid is conjugated linoleic acid which is defined as c9, t11-octadecadienoic acid and/or c10, t12-octadecadienoic acid." The examiner recognizes, however, that Nilsen does not teach "the employment of the combination of c9, t11-octadecadienoic acid and/or t10, c12-octadecadienoic acid in the acylglycerol, or the specific amounts of each of the two isomers...."

The examiner relies on Cain to make up for Nilsen's deficiency regarding the specific c9, t11, and t10, c12 isomers of octadecadienoic acid in the acylglycerol taught by Nilsen. According to the examiner (page 5, Office Action, mailed August 13, 2002), Cain "teach[es] that both c9, t11-octadecadienoic acid and t10, c12-octadecadienoic acid are considered the active isomers of CLA, and are known to be beneficial for animal health." In this regard, the examiner relies on Pariza (*id.*), "to show that [a] person of ordinary skill in the art possess the skill of preparing/or isolating the pure single isomer employed herein. See,

particularly, column 4, line 50, bridging column 8, lines 68, wherein, the separation, purification, and analysis of the isomers are discussed."

To make up for Nilsen's failure to teach an acylglycerol composition containing at least approximately 30% c9, t11-octadecadienoic acid and t10, c12-octadecadienoic acid, the examiner asserts (id.), "[t]he optimization of the ratio of the compounds is considered within the skill of the artisan."

Based on this evidence, the examiner finds (id.),

it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed ... invention was made, to make the composition of Nilsen et al. with acylglycerol [sic] compounds wherein the fatty acid moiety is a mixture of about equal amounts of c9, t11-octadecadienoic acid and t10, c12-octadecadienoic acid and employ the composition in feed for animals.

In this regard, the examiner asserts (id.), Nilsen did "not use ... other isomers of conjugated linoleic acids.... Therefore[, Nilsen] meet[s] the limitation set forth in claim 5 that other isomers are present in amounts less than 1%...."

In response, appellants assert (Brief, page 13), Cain "does not teach compositions comprising less than 1% 8,10; 11,13; and trans-trans isomers or methods of obtaining such compositions." Regarding Nilsen, appellants assert (id., emphasis removed), like Cain, Nilsen "provides no such compositions or methods [nor does Nilsen] teach any method at all for conjugation, they merely list CLA in a long list of fatty acids that may be useful in their invention." In support of this assertion, appellants rely on paragraph 6 of the Saebo Declaration which states "[w]ith respect to the Nilsen reference, I note that it does not provide any method of producing conjugated linoleic acid having less

than 1% 8,10; 11,13; and trans-trans isomers." Regarding Pariza, appellants assert (Brief, bridging paragraph, pages 13-14), "does not teach preparation of CLA in amounts suitable for incorporation into acylglycerides. Indeed, the HPLC purified isomers are produced for use as chromatography standards.

Importantly, because the isomers are produced for use as standards, Pariza does not teach or suggest combining the isomers to form a composition containing both t10,c12 and t9,c11 isomers are required by the [c]laims." See also Saebo Declaration, paragraph 7. Accordingly, appellants assert (Brief, page 14), Pariza "teaches away from a combination of isomers as required by the [c]laims."

In response, the examiner addresses each reference individually.

Accordingly, we will address the examiner's discussion of each reference in turn.

Cain:

The examiner relies (Answer, page 8) on his response to the anticipation rejection to address appellants' assertions regarding Cain. Accordingly, for the reasons set forth above, we are not persuaded by the examiner's assertion.

Nilsen:

Regarding Nilsen, the examiner asserts (id.), "one of ordinary skill in the art would have been expected to be able to practice the invention claimed by Nielsen [sic], including making an acylglycerol compound wherein the Rs are conjugated linoleic acids (specifically defined as c9, t11; t10, c12 isomers), see the claims in Nielsen [sic] et al." We fail to see the relevance of the examiner's reference to the claims of Nilsen. Upon consideration of Nilsen's claimed

invention we find no specific reference to c9, t11; t10, c12 isomers of CLA. At best, Nilsen's claims relate to a genus of CLA isomers. In this regard, we note the examiner's reference (Answer, page 6, emphasis added), to column 4, lines 4-6 of Nilsen, for what the examiner believes to be Nilsen's disclosure of "[t]he preferred conjugated polyunsaturated fatty acid ... which is defined as c9, t11-octadecadienoic acid and/or c10, t12-octadecadienoic acid." Appellants' claimed invention is directed to, inter alia, an acylglycerol composition containing at least approximately 30% t10, c12 octadecadienoic acid, not c10, t12-octadecadienoic acid. The examiner identifies no section of Nilsen, and we find none, that would suggest appellants' specific acylglycerol composition. Further, the examiner offers to response to appellants' assertion that Nilsen provides no method through which to produce an acylglycerol composition as set forth in appellants' claimed invention. Accordingly, we are not persuaded by the examiner's assertions to the contrary.

Pariza:

In response to appellants' argument concerning Pariza, the examiner asserts (Answer, page 8), "[a]ppellants concede[] that Paris [sic] et al. does provide purified CLA isomers, but nevertheless argue that Pariza's disclosure is for producing standard samples for HPLC, and is not in a scale suitable for making acylglycerol herein claimed." To this the examiner asserts (id.), "there is no limitation as to the quantity of the composition in claims 5-8." On reflection, we are not persuaded by the examiner's assertions.

While appellants do not dispute that Pariza teaches methods of making t10, c12 and c9, t11 octadecadienoic acid, appellants assert (Brief, page 13), "Pariza does not teach preparation of CLA in amounts suitable for incorporation into acylglycerides. Indeed, the HPLC purified isomers are produced for use as chromatography standards." In response, the examiner does not dispute that amount of t10, c12 and c9, t11 octadecadienoic acid produced in the method of Pariza would not be sufficient to produce appellants' claimed acylglycerol composition. Instead, the examiner concludes (Answer, page 8), "preparative HPLC would be obvious to one of ordinary skill in the art with similar condition[s]." Apparently, it is the examiner's position that a person of ordinary skill in the art would have found it obvious to scale-up the method taught by Pariza to produce a sufficient amount of t10, c12 and c9, t11 octadecadienoic acid to incorporate into acylglycerol molecules. The evidence of record, however, does not support the examiner's assertion. Further, the examiner fails to provide any evidence that the method taught by Pariza could be effectively scaled-up to produce the acylglycerol molecules required by appellants' claimed invention. In the absence of a reasonable expectation of success one is left with only an "obvious to try" situation which is not the standard of obviousness under 35 U.S.C. § 103. See In re O'Farrell, 858 F.2d 894, 904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988).

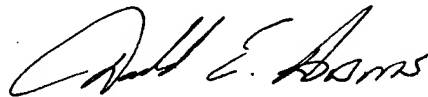
In order to establish a prima facie case of obviousness, there must be more than the demonstrated existence of all of the components of the claimed subject matter. There must be some reason, suggestion, or motivation found in

the prior art whereby a person of ordinary skill in the field of the invention would make the substitutions required. That knowledge cannot come from the applicants' disclosure of the invention itself. Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678-79, 7 USPQ2d 1315, 1318 (Fed. Cir. 1988); In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987); Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). On the record before us, we find no reasonable suggestion for combining the teachings of the references relied upon by the examiner in a manner which would have reasonably led one of ordinary skill in this art to arrive at the claimed invention. The initial burden of presenting a prima facie case of obviousness rests on the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In our opinion, the examiner has failed to provide the evidence necessary to support a prima facie case of obviousness.

Accordingly, we reverse the rejection of claims 5-8 and 13-17 under 35 U.S.C. § 103 as being unpatentable over Nilsen in view of Cain and Pariza.

REVERSED


William F. Smith
Administrative Patent Judge


Donald E. Adams
Administrative Patent Judge


Eric Grimes
Administrative Patent Judge

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/271,024	03/17/1999	ASGEIR SAEBO	CONFINCO-03681	3480
23535 7590 07/20/2005 MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105				
EXAMINER WANG, SHENGJUN				
ART UNIT 1617 PAPER NUMBER				

DATE MAILED: 07/20/2005

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09/132,593	08/11/1998	ASGEIR SAEBO		

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EXAMINER

WANG, SHENGJUN

ART UNIT

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The opinion in support of the decision being entered today is not written for publication and is not binding precedent of the Board.

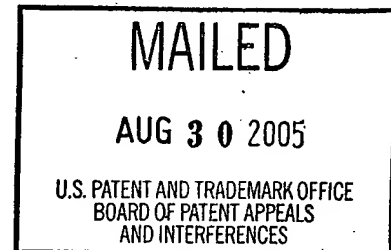
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ASGEIR SAEBO, and CARL SKARIE

Appeal No. 2005-1578
Application No. 09/132,593

ON BRIEF



Before WILLIAM F. SMITH, ADAMS, and GRIMES, Administrative Patent Judges.

ADAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-6 and 8, which are all the claims pending in the application.

Claim 1 is illustrative of the subject matter on appeal and is reproduced below:

1. A food product comprising conjugated linoleic acid alkyl esters in a biologically active concentration, said alkyl esters comprising less than about two percent trans,trans; 8,10 and 11,13 octadecadienoic acid isomers.

The references relied upon by the examiner are:

Baltes et al. (Baltes)

3,162,658

Dec. 22, 1964

Cook et al. (Cook) 5,554,646 Sep. 10, 1996

Cain et al. (Cain) WO 97/18320 May 22, 1997

Chin et al. (Chin), "Dietary Sources of Conjugated Dienoic Isomers of Linoleic Acid, a Newly Recognized Class of Anticarcinogens," J. Food Composition And Analysis, Vol. 5, pp. 185-197 (1992)

GROUND OF REJECTION

Claims 1-6 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Cook, Cain, Chin and Baltes.

We reverse.

DISCUSSION

According to the examiner (Answer, page 3), Cook "teach an active form of conjugated linoleic acid, i.e., 10,12-octadecadienoic acid and 9,11-octadecadienoic acid, which includes esters, salts and free acids of conjugated linoleic acid." In addition, the examiner finds (Answer, page 4), Cook teach that "[t]he conjugated linoleic acid may be obtained through isomerization of safflower oil;" "a food product comprising said active form of conjugated linoleic acid;" and that "[c]9, t11- and t10, c12-isomer[s] are the predominantly major isomers of the conjugated linoleic acid active form...." According to the examiner Cook do not teach 8,10- and 11,13-octadecadienoic acid isomers. Id. Therefore, the examiner reasons (id.), since Cook does not mention the 8,10- and 11,13-octadecadienoic acid isomers they must not be present and therefore, Cook meets appellants' claimed requirement of less than 2 percent 8,10- and 11,13-octadecadienoic acid isomers.

Regarding Chin and Cain, the examiner finds (id.), Chin "teach that it is known that c9;t11-conjugated linoleic acid isomer is an active form of conjugated linoleic acid," and that Cain "teaches a CLA [(conjugated linoleic acid)] composition made from sunflower oil for food additive contains 48.9% of c9, t11, 51.1% of t10,c12 linoleic acid or their esters."

Based on this evidence the examiner concludes (Answer, page 5),

it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed ... invention was made, to make a conjugated linoleic alkyl ester mixture from sunflower oil or safflower oil comprising c9, t11- and t10, c12-octadecadienoic moieties without/or with less than 2% of 8,10- and 1,13-octadecadienoic ester, such as those disclosed by Cain et al., and employ the mixture in food products.

In response, appellants argue (Brief, page 6), the Sæbo Declaration establishes that the compositions of Cook and Cain "cannot produce alkyl esters comprising less than about two percent trans,trans; 8,10 and 11,13 octadecadienoic acid isomers." According to the Sæbo Declaration (received December 9, 2004), repeat experiments were performed using the methodology described in Cook and Cain. For Cook, the Sæbo Declaration reports (paragraph 4),

this conjugation method resulted in in [sic] a conjugated linoleic acid composition comprising approximately 1.58% c11,t13 CLA and 2.34% t9,t11 and t10,t12 CLA. The t8,c10 isomer co-elutes with the c9,t11 isomers, but almost always occurs in a one to one proportion to the c11,t13 isomer.

Accordingly, the trans,trans isomers resulting from Cook's conjugation method are outside the requirements of appellants' claimed invention, which requires, inter alia, less than two percent trans, trans isomers.

Regarding Cain, the Sæbo Declaration reports (paragraph 6)

this conjugation method resulted in a conjugated linoleic acid composition comprising approximately 3.49% c11,t13 CLA and 2.24% t9,t11 and t10,t12 CLA. The t8,c10 isomer co-elutes with the c9,t11 isomers, but almost always occurs in a one to one proportion to the c11,t13 isomer.

Accordingly, the trans,trans isomers resulting from Cain's conjugation method are outside the requirements of appellants' claimed invention, which requires, inter alia, less than two percent trans, trans isomers.

In response, the examiner asserts (Answer, page 6), "the declaration fails to establish the fact that the conjugated linoleic acid disclosed by Cook or Cain as recited in the prior office action contains more than 2% of the isomers identified in claim 1 herein." In support of this assertion, the examiner finds (Answer, bridging paragraph, pages 6-7), while Cain acknowledges the existence of trans,trans isomers, Cain "do not disclose the presence of trans isomers in their CLA composition." Apparently, the examiner is of the opinion that since Cain and Cook do not specifically state that their CLA compositions contain isomers other than t10,c12- and c9,t11-octadecadienoic acid, the CLA compositions taught by Cain and Cook only contain t10,c12- and c9,t11-octadecadienoic acid. We are not persuaded by the examiner's assertion.

According to Cook (column 1, lines 65 to column 2, line 3);

[I]n one preferred embodiment of the method of the present invention the safe and effective amount of conjugated linoleic acid, which is selected from 9,11-octadecadienoic acid; 10,12-octadecadienoic acid; mixtures thereof; and non-toxic salts thereof is added to the feed of an animal in which it is desired to reduce the body fat.

We note, however, that according to Cook (column 4, lines 22-24, emphasis added), "[t]he terms 'conjugated linoleic acids' and 'CLA' as used herein are intended to include 9,11-octadecadienoic acid, [and] 10,12-octadecadienoic acid...." Thus, while Cook emphasizes the 9,11- and 10,12-octadecadienoic acid isomers, Cook leaves his definition of CLA open to "include" other isomers. In addition, Cook does not distinguish which geometric isomer is intended by the recitation of 9,11-octadecadienoic acid and 10,12-octadecadienoic acid. In this regard, we note that there is no requirement in Cook's claims that a particular CLA, let alone a particular geometric isomer of 9,11- or 10,12-octadecadienoic acid is required. Further, while the examiner recognizes (Answer, page 4), Cook discloses that "[c]9,t11- and t10,c12-isomer[s] are the predominantly major isomers of the conjugated linoleic acid...", the examiner fails to appreciate that Cook discloses (column 4, lines 48-50), "8 possible geometric isomers of 9,11 and 10,12-octadecadienoic acid (c9,c11; c9,t11; t9,c11; t9,t11; c10,c12; c10,t12; t10,c12 and t10,t12)...", all of which fall within Cook's definition of CLA. Accordingly, we fail to understand how the examiner has read Cook's disclosure as limited to a composition containing only the c9,t11- and t10,c12-isomers of octadecadienoic acid.

According to Cook (column 4, lines 28-29), "[t]he preferred method of synthesizing CLA is that described in Example 1", which appears in Column 2 of Cook. According to the Sæbo Declaration, in the repeat of Cook, "the conjugation conditions were the same as those described in [c]olumn 2 of ... [Cook]." The results reported in the Sæbo Declaration are consistent with Cook in that a CLA composition was obtained that included the 9,11 and 10,12 isomers of octadecadienoic acid. Cf. Cook, column 4, lines 22-24, emphasis added), "[t]he terms 'conjugated linoleic acids' and 'CLA' as used herein are intended to include 9,11-octadecadienoic acid, [and] 10,12-octadecadienoic acid...." While the results reported in the Sæbo Declaration are consistent with the disclosure of Cook, they are inconsistent with the requirements of appellants' claimed invention, because they include more than 2% of the trans,trans octadecadienoic acid isomer. Specifically, the resulting CLA composition contains, inter alia, 2.34% t9,t11 and t10,t12 CLA. For the foregoing reasons we are not persuaded by the examiner's assertions regarding Cook.

Regarding Cain, the reference discloses (page 3), "our invention concerns a new process for the preparation of CLA's, wherein the ratio $\frac{\text{cis}^9\text{-trans}^{11}}{\text{trans}^{10}\text{-cis}^{12}}$ can be chosen freely." Therefore, contrary to the examiner's assertion (Answer, page 7), it is not unreasonable for Cain to not report on the presence of other isomers in his CLA compositions, isomers other than cis⁹-trans¹¹ and trans¹⁰-cis¹² were simply not the focus of his invention. Cf. Sæbo Declaration, paragraph 7, "Cain may have simply chosen not to include non-

active isomers when reporting their results.” In this regard, we note that Cain state (page 5), “our invention also concerns novel organic materials, ... wherein the conjugated polyunsaturated fatty acid moieties at least comprise two isomers L₁ and L₂” According to Cain (id.), “is it preferred that L₁ and L₂ are cis⁹ trans¹¹ and trans¹⁰ cis¹²-linoleic acid (or vice versa)[.]” See also, for example, claims 1, 6 and 9 of Cain, wherein similar language is used.

Therefore, similar to the facts in Cook, while Cain emphasizes the cis⁹ trans¹¹ and trans¹⁰ cis¹² isomers, Cain’s compositions may comprise other CLA isomers. Accordingly, we see nothing inconsistent with the results of the repeat of Cain’s methodology as presented in the Sæbo Declaration. Paragraph 6 of the Sæbo Declaration, and the results attached at Tab 2 of the Declaration, reports that Cains’ methodology results in a composition comprising at least two isomers, the cis⁹ trans¹¹ and trans¹⁰ cis¹² isomers. The results also demonstrate however, that other isomers are also present in the resulting composition. Specifically, the resulting CLA composition contains, inter alia, 2.24% t9,t11 and t10,t12 CLA. For the foregoing reasons we are not persuaded by the examiner’s assertions regarding Cain.

On reflection, we disagree with the examiner’s conclusion (Answer, page 5), that it would have been prima facie obvious to a person of ordinary skill in the art, at the time the invention was made to combine the teachings of Cain, Cook and Chin¹ in the manner necessary to arrive at appellants’ claimed invention.

¹ In our opinion, the examiner’s reliance (Answer, page 4) on Chin to teach that c9,t11-conjugated linoleic acid isomer is an active form of conjugated linoleic acid, is insufficient to make up for the deficiency in the combination of Cain and Cook.

We also note the examiner's reliance on Baltes (Answer, page 5), to "teach that employment of low alkali alcoholate as catalysts for isomerization of unconjugated polyethenoid fatty acid compounds to conjugated isomers is known." However, in our opinion, Baltes fails to make up for the deficiency in the combination of Cain and Cook.

Prima facie obviousness based on a combination of references requires that the prior art provide "a reason, suggestion, or motivation to lead an inventor to combine those references." Pro-Mold and Tool Co. v. Great Lakes Plastics Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

[E]vidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. . . . The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular.

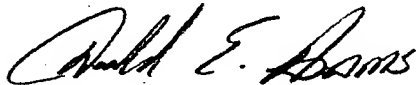
In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (citations omitted). The suggestion to combine prior art references must come from the cited references, not from the application's disclosure. See In re Dow Chemical Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

Based on the foregoing, it is our opinion that the examiner failed to meet his burden of presenting the evidence necessary to support a prima facie case of obviousness. If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

Accordingly, we reverse the rejection of claims 1-6 and 8 under 35 U.S.C.
§ 103 as being unpatentable over the combination of Cook, Cain, Chin and
Baltes.

REVERSED


William F. Smith
Administrative Patent Judge


Donald E. Adams
Administrative Patent Judge


Eric Grimes
Administrative Patent Judge

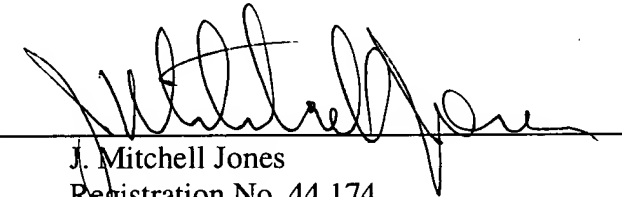
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XI. CONCLUSION

For the foregoing reasons, it is submitted that the Office's rejection of Claims 1-10 was erroneous, and reversal of the rejection is respectfully requested. Appellant requests either that the Board render a decision as to the allowability of the claims, or alternatively, that the application be remanded for reconsideration by the Office.

Dated: January 23, 2006



J. Mitchell Jones
Registration No. 44,174

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